

THE
UP-TO-DATE
CRIMINAL REFERENCE
(1836—1933)

BY

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Estates Partition and Survey Acts, etc.*

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PREFACE TO THE FOURTH EDITION.

In bringing out the Fourth Edition of this digest I beg to convey my heart-felt thanks to the Members of the Bench, the Bar and the Executive Departments whose patronage has ever encouraged me in compiling the successive Editions of the book within such a short period.

This time also the book has been thoroughly revised and materially improved and enlarged by about 400 pages of solid matter, and various new Acts and topics and up-to-date matter have been incorporated making the book much more useful and exhaustive, while its price has not at all been increased.

The cases that were reported during the period the book was being printed, have been inserted in the Supplement, and the case-laws reported up-to the time of publication have been carefully collected.

AUTHOR.

March, 1932

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THE UP-TO-DATE CRIMINAL REFERENCE.

Abandonment of children, see *I. P. C. s. 317.*

ABATEMENT.

—criminal proceedings once legally instituted, whether upon a complaint or otherwise, do not terminate or abate merely by reason of the death of the complainant or the person injured.
2 Lahore 27

—a criminal prosecution under s. 323 I. P. C. does not abate by reason of the death of the person injured. 44 M. 417, 22 A. L. J. 520 : 81 Ind. C. 719 : 25 Cr. L. J. 1007.

—a criminal prosecution cannot abate merely on account of the death of the injured party. S. 89 of the Probate and Administration Act has no application to a criminal prosecution. Where the complainant of an offence under s. 498 I. P. C. died before judgment the prosecution did not abate and the accused might nevertheless be convicted. 24 Cr. L. J. 29.

—a son cannot be made party in place of his deceased father.
21 C. 404.

—the words "may cause" in s. 145 show that the M. is not bound to continue the proceeding on the death of a party. 4 L. W. 57 : 17 Cr. L. J. 138.

B 564

—the representatives of the deceased appellant has their remedy by application to the Government in Council. Rat. Un Cr. 707

—in the case of a non-cognizable offence instituted upon complaint, the axiom of "*actio personalis moritur cum persona*" in civil law confined to torts does not apply and the trying M. has discretion in proper cases to allow the complaint to continue by a proper and fit complainant. 93 I. C. 891 : 28 Bom. L. R. 288 : 27 Cr. L. J. 491 : 1926 Bom. 178.

ABKARI ACT (Bombay Act V of 1878)

—the Civil Station at Wadhwan is not part of
A person carrying *dhāng* from Wadhwan Civil Station

Abkari Act—contd

4400 imports under s. 41 (a) Bombay Abkari Act, 1878, of importing the intoxicating drug into the Presidency of Bombay. 37 B. 152: 14 Bom. L. R. 876: 17 I. C. 534: 13 Cr. L. J. 790: 10 B. 244 Diss. 10 B. 166, 167

Where the accused consigned certain Mhowra flowers partly at the Nadlad and partly at the Umreth stations of a Railway Company for conveyance to Nandlad in Rajpipla State, and the goods were then possession of by the Railway Company and were consigned to Ankeshwar which was a proscribed area, for being transported into the Rajpipla State Railway, held that the accused had not committed any offence as he personally did not possess the flowers, nor did he transport them within the proscribed area or export them from that area. 27 I. C. 836: 17 Bom. L. R. 54: 16 Cr. L. J. 212

Case where opium is found to have been secretly possessed and sold without a licence must be dealt with so as to produce a deterrent effect. The Magistrate should pass a sentence of imprisonment if necessary, where a mere sentence of fine fails to check the evil of the illicit sale and possession. 12 I. C. 980: 13 Bom. L. R. 115: 12 Cr. L. J. 694

Possession of materials for manufacturing liquor and the sale of manufacturing and distinct acts punishable under different provisions. 52 B. 277: 108 I. C. 512: 1928 Bom. 141: 29 Cr. L. J. 412

On a license officer investigating an offence punishable under s. 41 of the Abkari Act and exercising under s. 41 the powers of a police officer in charge of a police station upon an accused to whom s. 45 of the Act and a confession made by an accused to him. 28 Cr. L. J. 122 F.B. 51 B. 78: 1927 Bom. 4: 28 Bom. L. R. 1196

—a sentence of fine is not the appropriate sentence where a person is convicted under s. 43 (1) (a) for possession of foreign liquor. 1926 Sind. 178: 27 C. L. J. 588: 92 I. C. 588

—condition in the license that the licensee should not sell spirit in full corked and capsuled bottles is not broken by the fact that he keeps spirit in other bottles 1927 Bom. 518: 29 Bom. L. R. 1012: 103 I. C. 834: 28 C. L. J. 754.

ABKARI ACT (Madras Act I of 1886).

—where the seals put on a cask containing arrack are not tampered with, and the weakness in the strength of the liquor is such as could be due to exposure owing to natural cause or constant sales, a conviction for possession of arrack below the normal strength is unsustainable. 30 I. C. 158: 16 Cr. L. J. 606.

—the possession of liquor which is made punishable under s. 55, cl. (a) is actual possession and not mere constructive possession. Where the first accused kept some contraband liquor in a cattle-shed belonging to the accused 2 and 3, the latter are not guilty of possessing liquor without license. 45 M. 842: 31 M. L. T. 310: 43 M. L. J. 553: 1922 M. W. N. 570.

Abkari Act—contd.

—under s 56 (b) an offence is committed the moment a person sells arrack below the strength specified in the permit, no matter what the cause of the variation may be 31 I. C. 656 : 15 Cr. L. J. 800.

—Ss 56 and 64 must be read together and not only the licensee but the actual offender is liable to prosecution for an offence under s. 56, 39 M. 895 : 32 I. C. 130 : 17 Cr. L. J. 2.

—under the Madras Abkari Act an accused person has a right to be tried under a special procedure. 72 I. C 175 : 44 M. L. J 231

Abduction, see *I. P. C. Ss. 364-369.*

Abatement and abettor, see *I. P. C. Ss. 34, 35 and Ss. 109-117.*

Abortion see *I. P. C. Ss. 312-314.*

Abducting, see *I. P. C. Ss. 172 and Cr. P. C. Ss. 87-88.*

ACCESSORY.

—no one is liable under the Indian Law for being an accessory after the fact. 2 C W N. 81.

—a person whose tongue is used for the purpose of abducting a girl is not an accessory after fact unless he conspired with or abetted the commission of the offence. 1930 Lah 163 : 1930 Cr. C. 171.

—it is settled law that a principal cannot be convicted as an accessory after the fact. 23 C L J. 333.

—it is unsatisfactory to have an alternative indictment, one court charging the accused as principal and the other as accessory after the fact. 23 C. L. J. 333, 22 C. 638 *Fol.*

See other cases under s. 201 I. P. C.

Accomplice, see *Cr. P. C. Ss. 337-339 and Ev. Act. 133.*

Account book, see *Ev. Act s. 34.*

ACCIDENT.

—If the accused puts forward a substantive defence of accident within the purview of s. 80 I. P. C., he must prove it. 19 C. W. N. 1043

—shooting accident is protected by s. 80 I. P. C. 3 Bom. L. R. 678.

ACCUSED,**Sub-headings of notes.**

(1) Who is accused.

(2) Rights and liabilities of accused.

(3) Statements of accused and co-accused

(4) Identification of accused.

(i) Who is accused ?

Magistrate exercises	
L. B. R. 80.	
Cr. P. C. is not an	
27 C. 662 : 6 C. W.	
3, 21 A. 107 24 A.	

Who is accused?—*contd.*

—an accused is a person charged with an infringement of the law for which he is liable to be punished. 41 C. L. J. 357, 41 C. L. J. 479. F. B.

—the provision of s. 360 (1) of the Cr. P. C. are inapplicable to proceedings under Chapter XII Cr. P. C. as parties to proceedings are not "accused". 41 C. L. J. 357, *contra* 3 P. L. T. 291.

—parties to a proceeding under Chapter VII of the Cr. P. C. are not accused. 50 C. 958 : 39 C. L. J. 75. *Discussed in* 41 C. L. J. 347 and in 41 C. L. J. 479 F. B.

—the word "accused" is to be read in both its wider and narrower senses according to the contents of the various sections and it has been used in s. 360 Cr. P. C. in wider sense, 41 C. L. J. 479 F. B., *per Mukherji and Charkervarty J.* In its wider sense it would include not merely persons accused of offences but also persons against whom proceedings are instituted under the Cr. P. C. (*per Mukherji J.*) 50 C. 958 : 39 C. L. J. 75 *dissented from*.

—proceedings under s. 489 is civil proceeding and the person proceeded against is not an accused. 16 C. 781.

—accused means a person under trial so a person called upon to show cause under s. 133 is not an accused. 2 C. L. J. 149.

—an informer is not an accused person. 1887 P. R. 38.

(2) Rights and liabilities of accused.

—It is not illegal to examine witness in the absence of the accused. 5 C. W. N. 110.

—an accused is not liable to account for his whereabouts at or about the time of commission of the offence unless there is sufficient *prima facie* evidence to convict him of the offence. 10 C. 970, 17 W. R. Cr. 47.

—every opportunity should be given to the accused and his friends to defend the case. 1 Bom. L. R. 856.

—an accused is entitled to put forward any defence open to him, technical or otherwise and to have the Court's judgment on it. 18 C. W. N. 498.

—an accused has the right to defend himself by pleader or mukhtar. 2 W. R. 50, P. R. 31 of 1870, and to give vakalatnamas to whomsoever he pleases. 1 B. H. C. 16, and to consult the pleader out of the hearing of Police Officers. 8 B. H. C. Cr. 126.

—s. 432 Cr. P. C. entitles an accused to authorise any person to be his agent. Rat. Un. Cr. 1.

—the accused is entitled to have conveyed to him by the process, the acts for which he would have to answer. 24 W. R. 58, Dist. 22 C. 391, and to know the nature of the proceeding. 6 Bom. L. R. 578.

—an accused is not bound to produce evidence and no inference can be drawn against him. Rat. Un. Cr. 779, 1 Prof. L. R. 74, 7 A. 160.

—an accused person must be allowed to cross-examine the witness for the co-accused making statements against him. 21 C. 401.

Rights and liabilities of accused—contd.

—an accused is entitled to have his witness summoned and examined even if they were named as implicated in the offence with which he is charged. 15 W. R. 7: 6 B. L. R. Ap. 65.

—an accused is entitled to call for and inspect records made under s. 161 Cr. P. C. and to cross-examine witnesses thereon. 16 C. 610 20 M. 189 7 M. L. J. 167 F. B., 19 A. 390: 17 A. W. N. 174 F. B., 9 C. P. L. R. 33, U. B. R. (1897-1901). 29, and to the inspection of books the subject of charge. 10 C. L. R. 54.

—an accused is entitled to have copies of all documents for which he asks. 6 B. L. R. Ap. 59: 14 W. R. 77.

—it is improper to attempt to make an accused person, before any evidence is recorded, confess his guilt and admit facts that may go to incriminate him. 2 C. W. N. 702.

—it is unfair to put the accused to severe cross-examinations. 5 C. P. 9, 10 C. 140 13 C. L. R. 358.

—the court cannot cross-examine the accused or ask him

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O. C. 204.

—an accused cannot be examined as a witness. 1 B. 610, 12 P. R. 1902, 3 Punj. L. R. 387, 33 C. 1353; 10 C. W. N. 962, 25 M. 61, 25 B. 422, 10 B. 190, 52 P. L. R. 1002, 100 P. L. R. 1902, 23 B. 213, 10 M. L. J. 147, 14 B. 331, 3 B. L. R. 437, 15 C. P. 211, but a person whose prosecution has been withdrawn under s. 494 Cr. P. C. can be examined as a witness in the case. 2 Bom. L. R. 1095: 25 B. 422.

—where the accused was questioned before all the witnesses for the prosecution had been examined, cross-examined and re-examined, the conviction was set aside and the case remanded for trial. 27 C. W. N. 28, 13 A. 345.

—s. 342 Cr. P. C. only empowers the court to examine the accused to explain the evidence already recorded. 5 C. W. N. 864, 7 C. W. N. 345, 8 C. W. N. 218, 10 C. 140.

—s. 342 Cr. P. C. requires that the Magistrate shall question the accused generally on the case after the witness for the prosecution has been examined, cross-examined and re-examined if necessary; the provision is mandatory. 27 C. W. N. 99, 25 C. W. N. 609, 15 C. W. N. 609, 15 C. W. N. 64 (note).

—under s. 342 Cr. P. C. a Magistrate is bound in a summons case to examine the accused before convicting him. 45 B. 672, so also in a warrant case, 41 C. 743.

—it is incumbent on the Magistrate to examine the accused to give him an opportunity for explaining away the evidence against him. 10 Bom. L. R. 201; 7 C. L. J. 194, 1 C. L. R. 436, 10 C. 140, 6 C. 190, 279. 5 A. 253, 1 Bom. L. R. 435, 17 C. 930, 30 B. 421, 11 Bom. L. R. 177.

Rights and liabilities of accused—*contd*

—questions must be strictly limited to the purposes described in s. 342 Cr. P. C. 14 A. 242, 13 A. 345, 5 C. W. N. 864, 7 C. W. N. 345, 19 A. 502, 27 M. 257, *contra*. 23 C. 502.

—it is not sufficient compliance with s. 342 Cr. P. C. to put general questions like "Have you anything more to say" or "you have heard the evidence, what have you to say" 20 Cr. L. J. 12.

See other rulings under s. 342 Cr. P. C.

—the examination of the accused should be taken down in the language in which it is delivered and as far as possible, in the words used by him. 24 W. R. 54, 21 C. 642, and the Magistrate shall certify that his examination contains a full account of the statement made by the accused. 4 Bom. L. R. 461.

—if a conviction is not an error of form, it is he conviction is liable to be set L. R. 201, 9 Bom. L. R. 356.

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—if a conviction is not an error of form, it is he conviction is liable to be set L. R. 201, 9 Bom. L. R. 356.

—when an accused person, asked under s. 342 Cr. P. C., makes a statement of innocence but in reply to the charge framed he pleads guilty, the Magistrate ought to record the subsequent statement in the form of questions and answers in the exact words used by the accused. 5 Bom. L. R. 999

—an accused has the right to ask the Sessions Judge trying him to have the evidence taken on a point which he thinks made in his favour. 13 W. R. 60, 8 B. L. R. 422 F. B., 17 W. R. Cr. 39 *contra*, 2 C. 405

—every facility should be given to the prisoner to enable him to prepare his petition of appeal 13 W. R. 69.

—when the accused is not defended the Magistrate is to cross-examine the witness. 7 A. 160

—an accused person cannot contest the propriety of a conviction by an affidavit containing matters not upon the record 1900 A. W. N. 8

—it is not illegal for a Magistrate to commit an accused to Sessions without examining him or his witness. 2 W. R. 50.

(3) Statements of accused and Co-accused.

—no oath can be administered to an accused and therefore he cannot be examined as witness 45 C. 720, 2 A. 260 10 B. 190, but used can be A. 426, 23 B.

to be corroborated by other than

—a statement made under promise of pardon is no evidence against the prisoner. 8 W. R. 53, or in any subsequent proceeding unless identity is proved. 11 C. 590, 26 A. 108, 3 L. B. R. 208, L. B. R. (1893-1900) 70.

Statements of accused and Co-accused—contd.

—statement of accused illegally pardoned is not admissible. 23 B. 213, 2 A. 260, 16 B. 661, 23 B. 213, 10 C. W. N. 962; 33 C. 1353, 5 A. L. J. 691, 25 B. 61, 52 P. L. R. 1902, 12 P. R. 1902, 16 C. P. L. R. 112, 100 P. L. R. 1902, A. W. N. (1908) 259; 5 A. L. J. 691 L. B. R. (1872-1892) 246.

—when the accused's own statement is to be relied upon it must be taken as a whole and nothing can be read into it which is not found within the four walls of the statement. 16 C. W. N. 1055.

—admission of the husband in presence of several witnesses that he kicked his wife and she died after receiving that kick was held to be direct evidence against him. 8 W. R. 25.

—evidence of the co-accused who has been charged but not arrested is admissible for the defence. 10 C. L. R. 553, 16 B. 661, 33 C. 1353, 10 C. W. N. 962; 4 C. L. J. 145, 100 P. L. R. 1902, 12 P. R. 1902, 4 N. L. R. 81.

—a co-accused against whom a criminal case has been withdrawn may become a competent witness, but for the purpose of cross-examination and if necessary for contradiction the prior statement of the witness should be made accessible to the accused 18 C. W. N. 1213.

(4) Identification of accused.

—the witness should be called on to identify each individual accused and the identification of each should be separately recorded

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ACQUITTAL.

—[ital] within s. 403
Cr. P. proceeding on a
fresh: 17 A. L. J. 867,
16 C. ter discharge very
strong grounds (i.e. discovery of new facts, &c.) are to be shown
for second complaint. 18 Cr. L. J. 329 (M.)

—withdrawal of charge sheets is no bar to fresh proceedings on fresh charge-sheets. 36 M. 315.

—Where there is nothing in the record to show that any trial was commenced on the first complaint, s. 403 does not bar the trial of second complaint. 40 M. 977 (Note). But the withdrawal of a summons case by the complainant, (Ratanlal 519: 1914 P. R. 19), or the withdrawal of the Public Prosecutor under s. 494 (b). (12 M. 35, 9 N. L. R. 26, 40 M. 976), has the effect of acquittal.

—where the jury is discharged under s. 305 the accused may be retried under s. 308 Cr. P. C., 41 C. 1072.

Acquittal—contd.

—where some are sent up and acquitted, the District Magistrate can order those not sent up to be put on their trial, though

C. is not legal if the stake. 24 C. L. J. 444.

—no adverse inference is to be drawn against accused persons after their acquittal. 16 C. W. N. 69, 8 A. L. J. 1128, 17 C. W. N. 238; 16 C. L. J. 467, 37 B. 658, nor when the criminal proceeding terminates in compromise. 17 C. W. N. 238; 16 C. L. J. 467.

—an accused may be convicted into conviction

subsequent
37 C. 604,

—but where the accused were convicted under s. 297 I. P. C. for entering a Mahamedan graveyard and cutting a tree there and were acquitted in appeal, they cannot be again prosecuted for theft on the same facts. 96 I. C. 875; 27 Cr. L. J. 1019; 1926 Lah. 639, (48 C. 78, 31 C. 1007, 40 B. 97) Cont.

—acquittal of some accused on a certain charge is no bar to proceed against another. 37 C. 680, 7 C. W. N. 493

—a stay of trial under s. 240 Cr. P. C. has not the effect of acquittal. 1889 A. W. N. 8.

—in a summons case when the M. does not find the accused guilty he must pass an order of acquittal and not of discharge. 1900 P. R. 19, even if the M. styles his order as one of discharge it amounts to an acquittal.

—but if the M. tries a warrant case as a summons case and passes an order of acquittal. It operates as an order of discharge 1886 A. W. N. 260, 4 C. W. N. 26.

—in a summons case the accused must be acquitted if the complainant is absent, even if the M. tries the summons case under the warrant case procedure. 44 M. L. J. 119, 38 C. L. J. 196, 4 C. W. N. 346, 2 P. L. T. 170, 4 P. L. T. 15, 34 M. 253, 26 M. L. J. 160, 40 N. 976.

—an order of acquittal under s. 258 cannot be treated as an order of discharge 43 M. 330.

—an order of discharge under s. 333 Cr. P. C. is no bar to a fresh proceeding. 16 C. W. N. 983; so also in case of discharge under s. 119 Cr. P. C. 33 M. 85.

—the High Court may in revision, on merits, on the application of the complainant, set aside the order of acquittal. 18 C. W. N. 1244.

Acquittal—contd

—where some are sent up and acquitted, the District Magistrate can order those not sent up to be put on their trial, though the order of acquittal is not set aside 7 C. W. N. 493.

—order of acquittal under s. 247 Cr. P. C. is not legal if the complainant is present in another room by mistake. 24 C. L. J. 444. 18 Cr. L. J. 104.

—no accused persons
after their s W. N.
238; 16 C. I proceeding
terminates

—an acquittal on one charge may be converted into conviction on alternative charge on accused's appeal. 18 C. W. N. 498:

—an acquittal under one section is no bar to subsequent prosecution under another section on the same statement. 37 C. 604. 10 C. W. N. 85 Dist. 40 B 97.

—but where the accused were convicted under s. 297 I. P. C. and cutting a tree there and prosecuted for theft 1926 Lah. 639, (48 C. 78, 31 C 1007, 40 B. 94) Contd.

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—when an accused is acquitted under s. 247 Cr. P. C. it can only be set aside by the H. C. 38 C. L. J. 196

—where an appellate court set aside a conviction and sentence on the ground that the court below did not comply with the provisions of section 360 and left the question of retrial to the Dt. M.

Acquittal—contd.

who directed a retrial, held that the order of the appellate court was quite legal and did not amount to an acquittal barring a fresh trial. 53 C. 192 95 I. C. 61 27 Cr. L. J. 733.

ACT OF STATE.

—a British Protectorate though not a Dominion is under the exclusive control of the Crown as regards foreign relations. Even in the internal administration the Crown may interfere to an extent which may render it difficult to draw the line between Protectorate and a poss
able in a
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subjects in a British Protectorate it was an Act of State which could not be questioned in a British Court or an act valid under the statutory power given in Foreign Jurisdiction Act. 30 C. W. N. 961: 39 I. C. 265 1326 P. C. 131 P. C.

ADJOURNMENT.**General**

—an adjournment should be allowed for the production of material documents in s. 145 Cr. P. C. case. 25 C. W. N. 602.

—in granting an adjournment for the day at the instance of the party the Magistrate can order him to pay the cost of the opposite side in exceptional cases. 42 B. 254.

—the M. should take some evidence before granting adjournment. 49 C. 182.

—the reasonable cause attended by s. 344 is some cause which will enable the Court to have before it all the materials relevant and forthcoming, upon which it can come to a decision. 2 A. L. J. 747: 1905 A. W. N. 254.

—once a M. has taken cognizance of a case his power of postponement and adjournment are regulated by s. 344 Cr. P. C. 28 C. W. N. 490: 83 Ind. C. 628.

—a M. cannot adjourn the hearing unless there are sufficient and proper grounds for doing so. 17 C. W. N. 159 (note), 10 A. L. J. 473.

—the court may adjourn the case on the ground that the examination of witness not already examined before the committing
36 Cr. L. J. 109, 15 C. 455.

..

commencement of the inquiry and is not commencement of the enquiry. 24 P. L. R. 1904: 1 Cr. L. J. 109, 15 C. 455.

Affidavit—contd

—an affidavit sworn to in the Court of a District Munsiff is a declaration which a Court of Justice is bound to receive as evidence of the facts stated in it, and it has none the less this character because it was sworn to before the Head Clerk of the District Munsiff's Court who was performing the Deputy Nazir's duties during his absence, under the order of the District Munsiff in accordance with s. 24 of the Act III of 1873 27 I. C. 159: 16 C. L. J. 111

—a person seeking by an application in revision to get rid of a conviction standing against him is incapable of tendering his own affidavit in support of such application, and consequently if he did tender such an affidavit he could not be prosecuted for false statements which might be contained therein. 19 A. 200, 28 A. 331: 3 Cr. L. J. 225, 26 A. W. N. 42, 3 L. B. R. 265.

—when the Magistrate recorded that the accused pleaded guilty if there was any mistake about the matter, the vakil and not the client ought to make an affidavit. 19 M. 209.

—important documents made in a verified petition to the High Court, if untrue, should be contradicted on affidavit. 8 B. H. C. 126.

—an accused cannot contest the propriety of a conviction by an affidavit containing matters not upon the record. 1900. A. W. N. 8.

—where in an affidavit the declarant makes a statement of a fact of information he must give details of the person

with sufficient particulars
would be safe to act

—an erroneous statement of routine by a person whose authority to make it was not proved could not bind a party to a proceeding. 16 C. W. N. 683.

—source of information stated in the affidavit, if not disclosed, the affidavit is bad. 11 B. L. R. 1298.

—grounds of relief should be stated, and what portion is stated on belief and what portion on knowledge should be strictly expressed. 37 C. 259, 14 C. W. N. 153.

—facts cannot be stated on inference only. 6 B. L. R. 704.

—every affidavit should clearly express how much of the statement is made from the knowledge of the deponent, and how much from his belief and the grounds of belief must be stated. Failure to distinguish between the two would be taken to mean that it is made only from knowledge antailing all its necessary consequences. 73 I. C. 721.

—an affidavit is ordinarily not evidence if it does not comply with the requirements of Or. 19 C. P. C., 63 I. C. 258.

—an affidavit must contain nothing but facts known to the person making the affidavit. 36 A. 13.

—as human beings are liable to make mistakes in reciting facts the law requires that the contents of affidavit should be

When appeal does not lie—contd.

jury 3 Bom. L. R. 218; 25 B. 680, 35 B. 423; 11 Bom. L. R. 350, 26 M. 243; 2 Weir 463, 23 B. 696, 25 C. 555, 3 Bom. L. R. 278 *contra*. 3 C. 765, 24 W. R. 30.

—no second appeal lies to the High Court where the appellate court under a. 428 Cr. P. C. takes additional evidence and disposes of the appeal 27 C. 372, 4 C. W. N. 497.

—no appeal lies to the District Judge from an order to furnish security affirmed by the Sessions Judge on reference, P. R. 23 of 86.

—when the Sessions Judge and assessors find the accused guilty on his own pleas, there is no appeal, 5 W. R. 52.

(4) Procedure, function and jurisdiction of the appellate court

—an appeal from an order of acquittal does not stand on a different footing 20 C. W. N. 123, 21 Bom. L. R. 1054, 17 C. 485, 20 A. 459, 26 Bom. L. R. 113, 9 S. L. R. 17.

—a petition of appeal may be presented by any person authorised by the appellant 1 M. 304

—an appellant may appear and be heard by a Mukhtar. 6 B. 14 and a pleader should be heard for the person called upon to give security. 23 C. 493, 4 C. W. N. 797, 25 A. 376; 23 A. W. N. 79, 15 P. R. 1900; P. L. R. 59

—an appeal should be presented either by the appellant or his pleader, 19 M. 354; 2 Weir 468.

—presentation of appeal-petition by the pleader's clerk is not improper. 20 M. 87; 2 Weir 437 but by a person who is not a clerk and over whose conduct and action the pleader has no control is not proper. 21 M. 114.

—an appeal sent by post is not proper presentation. Rat. Un R. 464, 15 M. 137. 2 Weir 468

—a prisoner in jail may present appeal before officer-in-charge and it is equivalent to presentation in court P. R. 29 of 1900.

—in case of joint appeal the court may dispense with separate copies 5 Bom. L. R. 704.

—at the hearing of appeal under a. 421 Cr. P. C. counsel for the appellant was entitled to refer to certified copies of the evidence 9 Cr. L. J. 55.

—a Judge in rejecting an appeal under S. 421 Cr. P. C. should shortly record the reasons. 17 A. 241, 19 A. 500. F. B., 25 M. 534, 3 A. L. J. 693; (1906) A. W. N. 303, 29 M. 236, 7 Bom. L. R. 89, 8 A. 514, (1895) A. W. N. 63, *contra* 9 C. W. N. 623, 21 C. 92, 20 B. 540, 25 M. 534

—a Judge may summarily dismiss an appeal of an accused admitting the appeal of co-accused 5 C. W. N. 332, 9 C. W. N. 623; 2 C. L. J. 344.

—an appeal complicated in law or fact ought not to be summarily dismissed. 3 P. L. J. 389; 19 Cr. L. J. 228 (c), 22 Cr. L. J. 349; 24 Cr. L. J. 477 (Pat).

When appeal does not lie—*contd.*

—the H. C. will not even revise the order of acquittal except at the instance of the Local Government. 15 B. 349, 6 C. L. R. 245, 5 N. L. R. 4, 15 S. L. R. 171, 8 L. B. R. 356.

—only the Public Prosecutor can file an appeal under s. 417 Cr. P. C. and a Legal Remembrancer is a Prosecutor within this s. 23 C. W. N. 96 : 46 C. 544 but not of other Provinces 41 C. 425,

—the Local Government has no right of appeal against an acquittal in a case tried by a pure question of fact. 26 C. W. N. 49, 19 W. R. 55, 14 M. 122, 1 Cr. L. J. 1022 : 2 L. B. against an interlocutory order, 10 B. 414.

—it is not open to the Government to appeal to the High Court on the ground of the Sessions Judge's refusal to add new charges. 16 B. 414.

—an appeal by Government should not be entertained when the judgment appealed from is based on facts and the conclusions of the Court are such as may reasonably be arrived at upon the facts found. 16 A. 212, 21 A. 122, 7 P. R. 1904, 2 L. B. R. 303 : 1 Cr. L. J. 1022.

—all sentences passed by the Deputy Commissioner of the Sonthal Parganas are final. 17 W. R. 11, 12 C. 536.

—no appeal lies from the order of Magistrate fining a defaulter under s. 25 Income-tax Act (Act IX of 1869) 14 W. R. 71.

—an order passed under s. 31 Court Fees Act, directing the accused to pay court fees is not appealable 20 C. 687.

order under s. 23 of the Cattle
ion. 15 C. 712, 11 M. 359, P. R.
M. 359, 3 N. W. P. 200, 15 C. 712,
of a Judge directing prosecu-
Magistrates Act. (IV of 1887)

—s. 411 Cr. P. C. does not allow an appeal in the case of conviction by a Presidency Magistrate where the sentence is six months' rigorous imprisonment and fine of Rs. 125 or 200 or in default a further period of three months' rigorous imprisonment. 16 C. 799, 20 B. 145, 2 M. 30.

—no appeal lies to the Sessions Court from the order of the
prosecu-

of immo-
25, 27 A.
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law only.

10, 20 C. 11, 14, 661.

—the question as to the admission of law. 27 B. 626, 23 C. W. N. 661, 25

—no appeal lies on matters of
of being tried with the aid of assess.

When appeal does not lie—*contd.*

jury 3 Bom. L. R. 218; 25 B. 687, 35 B. 423. 11 Bom. L. R. 350, 26 M. 243; 2 Weir 463, 23 B. 696, 25 C. 555, 3 Bom. L. R. 278 *contra*. 3 C. 765, 24 W. R. 39.

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—at the hearing of appeal under s. 421 Cr. P. C. counsel for the appellant was entitled to refer to certified copies of the evidence 9 Cr. L. J. 55.

—a Judge in rejecting an appeal under S. 421 Cr. P. C. should shortly record the reasons. 17 A. 241, 19 A. 529, F. B., 25 M. 534, 3 A. L. J. 695; (1906) A. W. N. 333, 29 M. 236, 7 Bom. L. R. 83, 6 A. 514, (1895) A. W. N. 68, *contra* 9 C. W. N. 623, 21 C. 92, 20 B. 549, 25 M. 534.

—a Judge may summarily dismiss an appeal of an accused admitting the appeal of co-accused 5 C. W. N. 332, 9 C. W. N. 623; 2 C. L. J. 344.

—an appeal complicated in law or fact ought not to be summarily dismissed. 3 P. L. J. 389; 19 Cr. L. J. 225 (Ct. 22 Cr. L. J. 349; 24 Cr. L. J. 477 (Patl.).

Procedure, function and jurisdiction of the appellate court—contd.

—the direction of law as to appeal from sentence and from order is distinct. 9 W. R. 18

—when appeal does not lie a petition of appeal may be dealt with in revision 2 A. L. J. 173, 2 Cr. L. J. 105

—when the judgment of the appellata court is defective the appeal must be retried 7 C. W. N. 30,

—if on the merits, it be established that the evidence against the appellant was weak or there were inherent improbabilities or infirmities in the case against him, then the H. C. might take into consideration the fact that the same witnesses were disbelieved in a subsequent trial. 41 C. L. J. 87.

—in a criminal appeal where several accused are concerned, the evidence against each should be gone into separately. 45 M. L. J. 728 33 M. L. T. 182

—a jail appeal can be heard by Vacation Judge, 46 M. 382.

—the appellate court cannot award to the complainant any portion of a fine paid by the convict which the trying court has not awarded, Rat. Un. Cr. 39

—if the appellate court set aside the verdict of the jury on the ground of misdirection it must be reversed in its entirety. 22 C. 377, 23 C. 975, 110 P. L. R. 1904; 13 P. R. 1904.

—when verdict of the jury is set aside the appellata court is not bound to direct a new trial, 25 C. 711 2 C. W. N. 369.

—an appellate Court should always be very cautious in interfering with a judgment of a judge and assessors who had the advantages to mark the demeanour of witnesses. 17 C. 435, 2 Weir 462, 19 B. 51, 7 P. R. (1904) 19.

—there is no apparent distinction between the right of appeal against an order of acquittal and the right of appeal against conviction 20 A. 459; (1898) W. N. 117, 4 A. 218, 2 A. 518.

—the High Court in exercising jurisdiction in the matter of appeal against acquittal, should confine its exercise to the particular grounds of objections which are raised by Government. 19 B. 51, 17 C. P. L. R. 75, 7 F. R. 1904.

—in capital cases, when the Local Government appeals under s. 417 Cr. P. C., it is undesirable that the prisoner's fate should be discussed while he remains at large 9 A. 528.

—the High Court is cautious in the use of its jurisdiction to try question of fact in revision specially where there is right to relief by appeal 14 B. 341.

—a person who is not a European British subject has no right of appeal because he is tried jointly

material to the question

195 Cr. P. C. for revo-

shall lie. 17 A. 51; (1894)

Procedure, function and jurisdiction of the appellate court—contd.

Magistrate of the first
s. 407 (2) C. P. C.
of the second class.
, 27 M. 124, 3 N. L. R.

Magistrate specially
ver
C.,

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17:

—an accused ought not to have conviction of an offence which
did not form the subject-matter of complaint. 5 C. W. N. 296

as to the truth of the

Cr. P. C. to limit the
4 C. W. N. 166; 27 C.

—in discharging the accused on the ground of misjoinder of
parties the appellate court can order retrial. 28 C. 104, 29 B.
449; 7 Bom. L. B. 527.

—an appellate court should not make proceedings infructuous
or absurd. 5 C. W. N. 432 overruled by 31 C. 691; 8 C. W. N. 538.

—when evidence is refused by the trial Magistrate the appel-
late court can direct the Magistrate to recommence the proceedings
from the stage when the evidence was refused. 28 P. R. 1884.

—there is no discretionary power given by sec. 244 Cr. P. C.
to refuse to compel the attendance of a witness, upon whom the

which are
27 C. 172,

—the King in Council is not a court of Criminal Appeal and
the power in the Sovereign to entertain such appeals is only to be
exercised when there has been such a gross denial of principles of
natural justice as has been defined in numerous cases. 26 C. W.
N. 57 P. C.

—an appeal lies under s. 406 Cr. P. C. from an order of the
Additional Magistrate to the District Magistrate, the Senior Judge
has no appellate authority thereunder. 48 C. 874

—s. 428 Cr. P. C. does not warrant an appellate court to send
a case to the Police for further investigation having been
origin N. 130.

dismissal of the Dr. P. C. can
the absence

Procedure, function and jurisdiction of the appellate court—contd

—when adequate excuse has been made for the pleader's
the appeal on its

nviction. 27 C. 999,
t Un. Cr. 353, 33

C. 295 : 2 C. L. J. 516.

—but an appellate court can alter a conviction under s 182
I. P. C to one under s. 500, 1903 A. W. N. 100.

—but the appellate court cannot alter conviction for graver
offences 6 C. L. R. 427, 26 C. 263 : 3 C. W. N. 650.

—s 423 cl. (b) Cr. P. C. gives power to the High Court when
hearing an appeal against conviction to alter the finding and s. 439
gives power to enhance the sentence so as to make it appropriate.
37 M 119

—an appellate court cannot enhance a sentence by altering
a sentence of fine into one of imprisonment 18 B. 751, 18 A. 301 :
(1896) W. N. 58, 17 A 67 (1894) W. N. 202, 23 B. 439, 27 C. 175,
16 M. L. J. 560, 30 M. 103 F. B.

—but order may be passed which does not enhance the
sentence. 23 B. 439, (27 C. 175, 23 A. 497) *Diss.*, 16 M. L. J. 560 :
1 M. L. J. 375 : 30 M. 103 F. B. *Ref.* 23 A. 497 : 2 A. W. N. 176.

—if the charge for substantive offence fails, the accused can
in appeal be convicted of abetment thereof, 19 C. W. N. 1239
contra, an appellate court cannot find a person guilty of abetment
of an offence on a charge of the offence itself. 5 Ind. C. 145 : 20
M. L. J. 84 : 11 Cr. L. J. 49.

—an appellate court cannot retain the sentence but reverse
the conviction on one of two charges. 45 P. R. 1837, 22 B. 760, 1 M.
L. T. 403 : 30 M. 48 : 5 Cr. L. J. 88.

—the court can deal with the prisoner who does not appeal
and is authorised to pass such order, sentence or judgment as it
thinks fit. 19 W. R. 57, 2 C. W. N. 49, 10 C. 970, 5 C. W. N. 330.
contra, 8 M. H. C. Ap. 7 : 2 Weir 314.

—a conviction for an offence for which the accused was tried
will not prevent his conviction if guilty of another distinct offence
subsequently committed. 9 W. R. 65 : 22 W. R. 3.

—an appellate court can make any amendment or any
consequential or incidental order that may be just or proper. 3
A. L. J. 770 : 1906 A. W. N. 256.

—in confirming a conviction passed by a subordinate court,
the District Magistrate cannot pass order for delivery of possession
under s. 522 Cr. P. C. when no such order was made by the trying
Magistrate. 16 C. W. N. 811.

—an order for Cr. P. C. cannot be

..... it is to discharge

.....

Procedure, function and jurisdiction of the appellate court—contd.

—the appellate court is to test the evidence extrinsically as well as intrinsically. 17 W. R. 59, 20 C. 353.

—discharge for want of jurisdiction is no bar to fresh proceedings. 29 C. 412

(5) Limitation

—an appeal preferred out of time without any explanation may be rejected at once under s. 415 Cr. P. C., 5 W. R. Cr. 40 and it may be also rejected even without hearing the appellant if the explanation of delay is insufficient Rat. Un. R. 90.

—in computing the period of limitation the number of days taken by the appellant of the sentence should be exempted when the prisoner is in jail, the application for copies and

transmission of copy to the jail should also be excepted 9 M 258: 1 Weir 789, P. R. 5 of 198

—in a joint trial when one of the accused appeals and is acquitted, the other can appeal although time barred. P. R. 7 of 1871.

—an appeal under s. 417 Cr. P. C. must be presented within 6 months from the date of order. (L. Act Art 157).

For other cases, see ss. 404—435 Cr. P. C.

APPEARANCE.

—non-appearance of complainant on the date fixed for argument and consequential acquittal of the accused is proper. 18 C W. N. 584.

—an order of acquittal under s. 247 Cr. P. C. passed by mistake or on a date not fixed for hearing of the complainant in absence of the complainant from the Magistrate 42 C. 365, 2 W

—the complainant's vakil is not appearance of the complainant within sec. 247 unless the court has specially allowed him to appear by pleader. 2 Weir 309.

For other cases see s. 247 Cr. P. C.

Approvers. See. ss. 297, 337, 338, 339 Cr. P. C. and s. 30 Eri. Act.

ARMS ACT.

S. 1 (extent of the Act)

—the sale of "arms" by the order of a court in execution of a decree is sale by public servant in discharge of his public duty and is excluded from the operation of the Act. But the court should give notice of such sale as provided by S. 5 of the Act. 9 B. 518.

—where the Public Prosecutor did not ask for trial of the accused under the Arms Act the H. C. could not convict under that Act without re-trial. 8 M. L. T. 296.

S 1—*contd.*

—it being a penal enactment should be construed in favour of the accused when any doubt exists. 1928 Nag. 219. 29 Cr. L. J. 575 : 109 I. C. 511

S 4 (Interpretation clause)

—the definition is neither exhaustive nor happy. 26 Ind. C. 133 : 15 Cr. L. J. 685 1 O L J. 559

—s 4 does not purport to give an inclusive definition of arms. 81 Ind. C. 943 (c).

—fire arms mean "arms" that are fired by gun-powder or other explosive 42 C. 1153 : 19 C. W. N. 706 : 21 C. L. J. 201 : 26 I. C. 313 : 16 Cr. L. J. 9

—unless there is something repugnant in the subject or context the word "arms" in the Act includes "parts of arms." Arms include firearms under this sec So "firearms" as used in sec. 4 include "parts of arms" 42 C. 1153 : 19 C. W. N. 706 : 21 C. L. J. 201 : 26 I. C. 313 16 Cr. L. J. 9.

—the section does not define 'arms' but clearly includes parts of arms, and Chavis are arms within the meaning of the Arms Act. 2 Punj. L. R. 103

—the definition of ammunition given in s. 4 is not exhaustive 23 P. W. R. 1910 (Cr), 81 Ind. C. 943 (c), 1 Weir 654, 16 P. R. 1910 Cr.

—it is the purpose for which an implement is used that determines whether it is an arm; an axe or knife ordinarily used for domestic purposes is not an arm. 99 I. C. 935 : 1927 Lah. 162 : 28 Cr. L. J. 199.

—empty cartridge case is ammunition within the meaning of the section 7 A. L. J. 102 : 4 Ind. C. 405, 7 Bom. L. R. 474 fol., 81 Ind. C. 215, 21 A. L. J. 879.

—empty cartridges come within the definition of ammunition given in sec. 4 of the Arms Act. 81 Ind. C. 215 (A), 32 A. 153, 4 Ind. C. 406 : 7 A. L. J. 102 : 10 Cr. L. J. 573 fol. 7 Bom. L. R. 474 : 2 Cr. L. J. 449 *ref.*, 20 P. R. 1890 Cr. *not fol.*

—the empty case of an exploded cartridge is part of ammunition within the meaning of s. 4. 21 A. L. J. 879, 7 A. L. J. 102 *fol.*

—a gun rendered unserviceable by the loss of the trigger is not an arm. 6 M. 60

—a pistol out of repairs is not a firearm. 24 A. 454.

—a firearm which is defective and otherwise unserviceable is not an arm 1 Weir 658, 12 C. P. L. R. 8.

—a gun-barrel and nipple in serviceable condition fall within s. 4, 7 M. 70.

—... in good condi-

S. 4—Interpretation clause—contd

—a knife having steel blade five inches long one inch broad and shaped as dagger with a long handle is an arm. 5 Rang 710 ; 106 I. C. 707 · 29 Cr. L. J. 115 · 1928 Rang. 49.

—a clasp-knife is not an arm 1 L. B. R. 271 8 Burma 264.

—a hunting knife is an arm 81 Ind. C. 943 (O).

—an instrument which has a blade tapering gradually to a point and which was attached to a cross-guard and handle is an arm. 51 C. 573 : 81 Ind. C. 943.

—a sword-stick is an arm. 11 C. W. N. 971 : 6 C. L. J. 751 : 34 C. 749

—a *dashe-upyat* of the usual type is not an arm. 5 L. B. R. 207.

—the true criterion is not whether any given *dah* is a *upyat* but what was the intention of the maker as regards its purpose. Where it is clearly intended to be used as a sword and is sheathed as such or when from its length or otherwise it appears that it was intended primarily for a weapon of offence and not for domestic purposes it must be held to be an arm as defined in the Arms Act. 68 I. C. 818 · 23 Cr. L. J. 594 : 11 L. B. R. 340 : 1923 Rang. 23.

—all parts of ammunition in s. 4 includes empty cartridge cases. 7 Bom. L. R. 474 : 2 Cr. L. J. 449

—rockets referred to in the definition of ammunition are war-rockets 5 M. 159, 8 M. 202 *Dist.*

—a revolver with a broken trigger is a 'firearm'. 21 M. 360 F. B. ; 6 M. 60 *Overruled.*

—although lead is exempted from the operation of s. 4 yet when moulded into bullets of 20 or 24 bore, becomes ammunition. 23 P. W. R. 1910 (Cr.)

—'arms' include parts of 'arms' and so the possession of hilts of swords is an offence. P. R. 38 of 89.

—bolts and bars of rifles are arms within sec. 4 ; 38 P. R. 1889 Cr., 1923 Lah. 617 · 77 Ind. C. 1003.

—an air-gun not adapted for use with explosive substances and classed as toys was a toy and not an arm 14 Cr. L. J. 239.

—a revolver with broken trigger is within the definition of "arms" 21 M. 360.

—in order to fall within this sec. the weapon need not be in serviceable condition. 21 M. 360 F. B., 77 I. C. 1003 : 1923 Lah. 617.

—the possession of *chhau* is unlawful. 52 I. C. 193 : 20 Cr. L. J. 577 : 10 P. L. R. 1919.

—a *lathi* consisting of a blade and two movable screws and so contrived that by loosening the screws the blade may be detached from the shaft made up of the *lathi* is not an "arm" 26 Ind. C. 133 : 15 Cr. L. J. 685 : 1 O. L. J. 559.

—*Lathi* are undoubtedly arms with the meaning of s. 106 Cr. P. C. 35 I. C. 499 : 17 Cr. L. J. 313.

—sword-hilts being part of arms are themselves arms. 38 P. R. 1889 Cr.

S. 4—*interpretation clause—contd.*

—whatever can be used as an instrument of attack or defence, or cutting as well as for thrusting and is not an ordinary implement for domestic purposes, is an 'arm.' 34 C 749; 11 C. W. N. 971; 6 C. L. J. 227.

—where the instrument was a bamboo *dang* 5 feet 7 inches long with an iron attachment at the thick end and when the person who had it, had also concealed in the folds of his loin cloth a blade 8 inches long which fitted the end of the *dang*, held that the instrument was not for ordinary domestic purposes but for purposes of offence and defence and that it was included in the term "arms." 64 I C 847 23 Cr. L. J. 3 12 P. L. R. 1922.

Principles determining an "arm" within the Act.

—the purpose, for which an instrument is primarily intended, regulates whether it should be considered an arm or not. 5 L. B. R. 130 11 L. B. R. 340. 68 Ind. C. 818, 7 B. L. R. 340, 2 Cr. L. J. 372

—the length, breadth or the form of the blade of a weapon is no criterion of the name of sword whatever can be used as an implement of attack or defence, for cutting as well as for thrusting and is not a domestic instrument, comes within the Act. 11 C. W. N. 971; 34 C. 749; 6 C. L. J. 751, 48 Ind. C. 486.

—it is the intention of the manufacturer, and not the use of the possessor of a weapon, that determines whether a weapon is an arm or not. 5 L. B. R. 207, 1 L. B. R. 271; 8 Burm 264.

—it is the purpose for which an implement is primarily used which determines the question whether it does or does not fall within

—whether in any particular case an instrument is a firearm or not, is a question of fact to be determined according to circumstances, and the question is not whether a particular weapon is serviceable as a fire-arm but whether it has lost its character. 2 Lab. 291. 21 M. 360, 6 M. 60, *overruled*, 9 Cr. L. J. 259 F. B.

—the word "arm" means something which has the potentiality of being used as such. 4 Cr. L. J. 239.

—the fact that a weapon is dangerous and may, if used cause death, does not make it an "arm" 1 O. L. J. 559; 26 Ind. C. 133.

—the test is whether the particular instrument is usually employed for the purpose of offence and defence. P. L. R. 10 of 1919, 53 Ind. C. 193, P. R. 16 of 1910; 6 Ind. C. 952

S. 5 (Unlicensed manufacture of arms.)

—an agreement authorising a person named to sell arms under a license granted to and in the name of a certain licensee is not illegal, though it virtually amounts to transfer of license 1 Burma. 168.

S. 4—Interpretation clause—contd

—a knife having steel blade five inches long one inch broad and shaped as dagger with a long handle is an arm. 5 Rang 710 ; 106 I. C. 707 : 29 Cr. L. J. 115 1928 Rang. 49.

—a clasp-knife is not an arm. 1 L. B. R. 271 : 8 Burma 264.

—a hunting knife is an arm 81 Ind. C. 943 (C).

—an instrument which has a blade tapering gradually to a point and which was attached to a cross-guard and handle is an arm. 51 C 573 : 81 Ind. C. 943.

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—all parts of ammunition in s. 4 includes empty cartridge cases. 7 Bom. L. R. 474 : 2 Cr. L. J. 449

—rockets referred to in the definition of ammunition are war-rockets. 5 M 159, 8 M 202 Dist.

—a revolver with a broken trigger is a 'firearm'. 21 M. 360 F. B., 6 M. 60 Overruled.

—although lead is exempted from the operation of s. 4 yet when moulded into bullets of 20 or 24 bore, becomes ammunition. 23 P. W. R. 1910 (Cr.)

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—In order to fall within this sec. the weapon need not be in serviceable condition. 21 M. 360 F. B., 77 I. C. 1003 : 1923 Lah. 617.

—the possession of *chhatz* is unlawful. 52 I. C. 193 : 20 Cr. L. J. 577 : 10 P. L. R. 1919.

—a *lathi* consisting of a blade and two movable screws and so contrived that by loosening the screws the blade may be detached is not an "arm" 26 Ind. C. 133 :

arms with the meaning of s 106 J. 313.

of arms are themselves arms. 38 P. k. 1889 Cr.

S. 13. Unlicensed possession of firearma &c,—contd

16 C. L. J. 9, (27 C. 692, 4 C. W. N. 750, 5 Cr. L. J. 435; 3 N. L. R. 53) *fol.*

—s. 14 does not require a person to deposit a spear. 29 I. C. 544; 2 L. W. 532; 16 Cr. L. J. 523.

—the only person that can be punished under cl. f, of sec. 19 is the person who has in his possession or under his control any arm in contravention of the provisions of ss. 14 and 15. 15 C. W. N. 440; 10 I. C. 683; 12 Cr. L. J. 197.

—the fact that a person's house on being searched for stolen goods was found to contain two empty cartridge cases does not amount to an offence under s. 19 f because the cases in question are incapable of being re-loaded in India. 23 A. L. J. 455.

S. 15. (Possession of unlicensed gun in prohibited places)

—"going armed" means "carrying arms" and a person getting a license for protection cannot use it for sports. 1 Weir 663.

—the license need not always be with person carrying the gun. 1 Weir 662.

—mere temporary possession for purposes other than use without a license is not an offence. 37 B. 187, 17 I. C. 795; 13 Cr. L. J. 860, 41 C. 11.

—temporary possession of a gun is not a possession contemplated by s. 14 of the Act. 12 C. W. N. 272; 35 C. 219; 7 C. L. J. 242, 13 C. W. N. 124 *Ref.*

—a repairer of gun who is in possession of guns made over to him for repairs cannot be guilty of an offence for possession of arms without license. 1929 All 720; 30 Cr. L. J. 984; 119 I. C. 13.

For other cases, see s. 19 below.

—the term firearms as used in s. 14, read with s. 4 means arms that are fired by means of gunpowder or other explosives and includes parts of firearms. 19 C. W. N. 706; 42 C. 1153, 27 C. 692, 5 Cr. L. J. 435, 3 N. L. R. 53.

—s. 14 does not refer to all arms, but only to firearms, cannons, ammunitions and military stores. A spear does not come within the sec. 29 Ind. C. 544; 2 L. W. 532.

—the possession of a bayonet without a license is not an offence under the Arms Act except in Districts proclaimed under s. 25. 1 Burma. 426.

—when a Havildar was appointed Jamadar with a retrospective effect from the date prior to that of the offence, his conviction must be set aside. P. R. 27 of 1885.

—the possession of a sword, dagger or bayonet without a license in a place where s. 15 does not apply is not an offence. 1 Weir 666, L. B. R. 1872-1892, 426, 9 B. 473.

—presence of firearms found on search
her proof, he imputed to any other
this presumption may be

S. 16. (Arms to be deposited).

—confiscation for mere delay in applying for a renewal of license is not legal 22 Ind. C. 165 (M) 15 Cr. L. J. 21.

B. 17. (Power to make rules as to licenses).

—the law does not require a bearer of the arm to have the license with him, it is sufficient if he can show the license if opportunity is given to him. 20 C. 444.

S. 19. (Punishment for breach of ss. 5, 6, 13-17)

—where the license contained a description of a gun as a full barrelled gun it cannot be held as a license to possess a half barrelled gun. 1928 Lah. 759 109 I. C. 120 : 29 Cr. L. J. 472 : 10 Lab. L. J. 302

—the notification relating to the Arms Act imposing a penalty on the subject must be construed very strictly. 32 Bom. L. R. 106

—whether there is ammunition for the use of the gun in the immediate control of the accused or not as he goes holding the gun, he goes "armed" 77 Ind. C. 736 : 25 Cr. L. J. 448.

—where a man finding himself arrested for being in possession of a revolver, attempts to throw it away, the act of such person comes under s. 19 (f). 9 Mad. L. J. 475

—when two accused were lying in a bed in the house of another and in the bedding a *chauri* was found wrapped in a cloth, it was impossible to say who was in possession. 65 Ind. C. 447 : 23 Cr. L. J. 95, 13 P. W. R. 1922 : 1923 Lah. 513, 77 Ind. C. 447. 25 Cr. L. J. 399.

—when the accused took the gun of his relative and carried it in a marriage procession where he fired some shots and wounded some public accidentally he was guilty under this sec. A marriage procession is a public assemblage 24 B. L. R. 487 1923 Bom. 35 : 67 I. C. 722 : 23 Cr. L. J. 450, *contra*. A marriage procession is not a religious procession nor a public assemblage. 109 I. C. 511 : 1928 Nag. 219 : 29 Cr. L. J. 575.

—from s. 22 it is clear that the transfer of possession contemplated is something more than the entrusting of an arm to a servant. Throughout the Act the word "possession" must be taken to mean something different from mere control. 4 N. L. R. 76

—offences under s. 19 cl. (a) is keeping arms for sale and not keeping arms only. 19 C. W. N. 706 : 42 C. 1153 21 C. L. J. 201 : 26 I. C. 313 : 16 Cr. L. J. 9.

—the expression 'going armed' as used in s. 19 was not intended to render penal the mere act of carrying arms unless there was some sort of intention of using the arms. 11 A. W. N. 208, 15 A. 27, 16 A. 276, 24 A. 434 : 14 A. W. N. 62.

S 19. Punishment for breach at ss. 5, 6, 13-17—*contd.*

—but the presumption is against the person carrying arms 15
A. 27 : (1892) A. W. N. 203.

—an order extending the period of license is valid and the licensee commits no offence during the extension. 3 C. W.N. 394

—if the place in which the article is found is one to which several persons have equal right of access, it cannot be in the possession of any one of them. 21 C. W. N. 839, 2 Punj L. R. 240, 13 C. W. N. 861

—in regard to a criminal charge, when an article is found in a room to which several persons have access, it cannot be held to be in possession of any one of them. 13 C. W. N. 861, 15 All. 129 *fol.*

—when an article is found in a man's house the ordinary presumption is that he as owner of the house is aware of its contents but with the qualification that no other person has access to the place. 18 C. W. N. 498. 41 C. 350.

—where as a result of a search certain cartridges were discovered in a room in which the residents of the house and some stevedores

—when proceedings for unlawful possession of gun are taken against a member not being the head of the joint Hindu family and arms are found in the common room, the prosecution must prove his exclusive possession and control. The Act is highly penal and must be strictly construed. 15 A. 129. Under similar circumstances even the head of the family cannot be punished. 52 P. R. 1905, 21 C. W. N. 839.

—the knowledge of the existence of the arm would not without other evidence be imputable to any other than the lessee of the hut. 18 C. W. N. 498. 41 C. 350.

—an offence under s. 19 cl. (c) is committed when a person enters British India with a weapon he is not lawfully entitled to possess in this country, the intention of the offender is not to be considered.
35 M. 596. 17 I. C. 408; 13 Cr. L. J. 776.

—for the purpose of conviction under clause (e) of section 19 there must be some clear evidence to prove the intention on the part of the accused "going armed" to use the weapon. In the absence of any evidence whatever to use it as a fire-arm a conviction of the accused under that clause is wrong. 87 L. C. 916; 48 M. L. J. 502; 1925 M. W. N. 217; 26 Cr. L. J. 1028.

— "armed" includes carrying an arm not capable of immediate use 1925 Smd 177, 53 B. 604; 31 Bom. L. R. 536; 30 Cr. L. J. 1059; 1929 Bom. 283; 119 I. C. 641.

Ver. 324 I. P. C. does not bar
(e). 53 B. 604: 1929 Bom. 283:
L. J. 1059.

must be some clear evidence to prove the intention on the part of

S. 19. (Punishment for breach of ss. 5, 6, 13-17)—*contd.*

—the servant of an exempted person commits no offence by carrying the master's gun and shooting game with it with the master's permission. 51 Ind. C. 208.

—exemption should be construed literally. the privilege conferred by the exemption is of personal nature and does not extend to the servants and relations of the person exempted. 25 C. P. L. R. 112, 4 S. L. R. 214.

—where the servant of a lady in the Nepal State brought a gun to British India for the purpose of having it repaired and he had no licence he was guilty of an offence under s. 19 (e) though imposing fine was sufficient. 30 Cr. L. J. 543 : 1929 Oudh. 157 : 115 I. C. 839.

—when a gun is given to an acquaintance for getting it repaired in a neighbouring town and the person sends his father with the gun for the purpose the latter is not guilty of any offence. 24 A. 302.

—where a gun was made over to a person about a year and a half ago and that person continued in possession without a licence he was punishable. 15 C. W. N. 440, 10 Ind. C. 988, 14 Bom. L. R. 50.

—where the servant retained possession of the gun after the death of his master without licence, he was guilty. 14 Bom. L. R. 501 : 15 Ind. C. 797.

—where the accused and his master were found to have acted in the honest belief that there was nothing wrong in the servant having the gun and trying to use it for shooting game an order for confiscation was wrong. 46 M. L. J. 401 : 1924 M. W. N. 875 : 47 M. 438 : 81 Ind. C. 628.

—guns carried and used by the servant of the exempted persons by a Government notification under s. 27, was in the 'personal use' of the exempted person within the meaning of the notification. 22 A. 118 : 1899 A. W. N. 213, 13 C. W. N. 124 *Dist.*

—where the accused was shown to have partaken in meetings in order to possess firearms and ammunitions but the goods themselves were not passed and there was nothing to prove that they were with the vendor at the date of meeting, the conviction of the accused on those facts would lie under s. 19 (i) and not under s. 22. 31 C. W. N. 239 : 28 Cr. L. J. 241 : 100 I. C. 113 : 1927 Cal. 265.

—a minor who has in his custody and under his control arms without a licence, is guilty of an offence under s. 19 (f) Arms Act, though nothing in the Act to prevent a minor being guilty of an offence thereunder. 40 A. 420 : 41 I. C. 975 : 16 A. L. J. 323 : 1907 Cal. 47.

—a lathe 6 feet 3 inches long having an axe like blade 5" long within s. 19 (f), 29 Punj. L. R. 306 : 1928 Lah. 295 : 2 I. C. 49.

—prosecution under s. 19 (f), requires the previous sanction of the Magistrate. 9 C. P. L. R. Cr. 26, 9 Mad. L. J. 475, 5 L. T. 162, 2.

S. 19. Punishment for breach of ss. 5, 6, 13-17—contd.

—when the Cantonment Magistrate sent the information he received from a person that the accused has a gun and a revolver without license to the police, no sanction was necessary for starting a prosecution. 27 A. L. J. 28 : 116 F. C. 29 1929 A. 68

—in the district of Bynor and other parts of those provinces that lie to the north of the rivers Jumna and Ganges, prosecution under section 19 does not require the sanction of the District Magistrate 91 I. C. 47 24 A. L. J. 30 1926 All. 143. 27 Cr. L. J. 15. 1929 All. 68, 27 A. L. J. 215. 117 I. C. 822 1929 All. 69 30 Cr. L. J. 856

—where an article the possession of which is forbidden by the arms Act has been discovered by reason of information given by an accused person, the conviction based upon that evidence is legal 9 Lah. L. J. 211 100 I. C. 122 : 28 Cr. L. J. 250

S. 20 (Punishment for secret breaches of ss. 5, 6, 10, 14-15.)

—s. 20 though widely worded is in practice only applied to cases where import of the arm is attempted. 9 P. R. 1912 Cr., 24 Ind. C. 394 : P. L. R. 33 of 1914.

—s. 20 directly applies only to cases where the import or export of arms is attempted. It does not apply to ordinary cases of concealment of arms. 18 I. C. 265 : 14 Cr. L. J. 41. 44 P. W. R. 1912. (9 Cr. L. J. 259 F. S., 27 C. 692) *fol.*

—each case of concealment of arms must be decided on its own facts. 8 P. R. 1915 Cr., 1923 Lah. 79, 221, 68 I. C. 833.

—sec. 20 of the Arms Act applies only when the possession of arms is such as to indicate an intention that such act may not be known to any public servant or where the import or export of arms is attempted and not to every case of possession or concealment of arms 26 P. L. 49 : 6 Lah. 151. : 86 I. C. 221 : 26 Cr. L. J. 733.

—where the weapon which was found to fit the danger the appellant was carrying, was originally concealed but the appellant voluntarily took it from its place of concealment in order to threaten a railway servant who caught him for travelling without a ticket, held that it indicates an indifference as to whether the weapon was seen or not, so the intention requisite for an offence under s. 20 was not to be established and conviction must be altered to one under s. 19. 83 I. C. 726 : 26 Cr. L. J. 165

—each case of concealment of arms must be decided on its own facts as to whether it falls under s. 19 or 20 of the Act. To apply s. 20 there must be some special indication of an intention that the possession of the arms was being concealed from a public servant or from a Railway official. If arms are merely concealed in a house which, it cannot be anticipated, the police will come and search, s. 20 will not apply. The possession must be furtive as against public servants, railway servants, or public carriers and such cases generally occur when arms are being illicitly imported or transported. 94 I. C. 401 : 7 Lah. 65 : 27 Cr. L. J. 625 : 1925 Lah. 262.

S 20 (Punishment for secret breaches of ss. 5, 6, 10, 14-15)—*contd.*

86 I. C. 221 : 1925 Lah. 395 : 9 Lah. 550 : 109 I. C. 593 : 29 Cr. L. J. 577 : 1928 Lah. 193

—concealing a weapon while on a railway platform must indicate an intention to conceal the weapon from *inter alia* railway officials who are about that platform. 9 Lah. L. J. 533 : 107 I. C. 495 : 1928 Lah. 110 : 29 Cr. L. J. 256 : 29 Punj. L. R. 329

—as small instruments are naturally put in one's pocket, carrying small arms such as a pistol, a dagger or a blade of a chhuri in pocket cannot give rise to the inference of concealment. 1927 Lah. 561 : 108 I. C. 207 : 28 Cr. L. J. 671.

—where arms ammunitions are hidden under a bag covered with a chadder worn by the accused the offence falls under s. 20 and not merely under s. 19. 89 I. C. 1027 : 1926 Lah. 61 : 26 Cr. L. J. 1459

—s. 20 applies when the possession of arms is such as to indicate an intention that such act may not be known to any public servant or when the import or export of arm is attempted but not to any kind of possession or concealment of arms. 86 I. C. 221 : 6 Lah. 151 : 7 Lah. L. J. 329 : 1925 Lah. 395.

—s. 20 is not applicable to ordinary cases of concealment. Where the circumstances proved that the intention of the accused was that the possession of the pistol by him might not be shown to any public servant, the accused must be convicted under s. 20. 96 I. C. 390 : 27 Cr. L. J. 934 : 27 Punj. L. R. 446.

—where it is shown that the concealment was made so that the possession of the weapon should not be known to the police accused can be rightly convicted under this sec. 68 I. C. 833 : 23 Cr. L. J. 609.

—intention to conceal must be proved 8 B. L. R. 452, 42 C. 1153.

—mere denial on the part of the person whose house is searched that he has no arms in possession does not constitute concealment or attempt to conceal arms. 28 A. 302.

—the words "conceals or attempts to conceal" in s. 20 must be read with what precedes, namely that the concealment or attempt at concealment was made on a search being made under s. 25 3 A. L. J. 833 : 11 A. W. N. (1906) : 28 A. 302.

—the fact that the accused ran away when challenged by the constable proves an intention to conceal the arm but when his companion upon whose person nothing incriminating could be found also ran away, such intention cannot be attributed to the accused. 1919 Lah. 576 : 1929 Cr. C. 142.

—the first part of s. 20 does not apply to cases of concealment or attempts at concealment made by a man who has arm on his person or in a bag which he is carrying or which is otherwise in his immediate personal possession only on being arrested. It deals with cases of concealment before arrest so where a man finding himself arrested for being in possession of a revolver, at empty to throw it away, the act of such person would only come under s.

S 20. (Punishment for secret branches of ss. 5, 6, 10, 14-15)—contd.

19 cl. (f). 10 I. C. 261 : 1911 M. W. N. 271 : 9 M. L. T. 475 : 12 Cr. L. J. 234.

—indifference on the part of the accused to conceal an unlicensed *chhauri* disproves the intention requisite to constitute the offence under this sec. 83 Ind. C. 726 : 1923 Lahore 10.

—a master is criminally liable for what a servant does in the course of his employment with which he is entrusted. 24 B. 423 : 2 B. L. R. 52

—delivery into possession contemplated by s. 22 of the Arms Act is such delivery as gives the person into whose possession the arm is delivered, control over the arm and authority to use it as an arm, so a person leaving a trap formed by a rifle in charge of his servant commits no offence under a 22, 5 L. B. R. 83.

—an offence under s. 20 is different from an offence under s. 19 (b) The element necessary to constitute an offence under s. 20 is that the possession should be in such manner as to indicate an intention that such act may not be known to any public servant. 43 C. 1153 : 19 C. W. N. 706 : 21 C. L. J. 201 : 26 I. C. 313 : 16 Cr. L. J. 9.

—a concealment in loin cloth at a public fair is within this sec. 28 I. C. 796 : 8 P. R. of 1915 : 16 Cr. L. J. 412, 9 Cr. L. J. 259 F. B. Ref but carrying a revolver in a pocket does not come under s. 20, 30 I. C. 461 : P. W. R. of 1915.

—where a *chhauri* head was found concealed in the waist-coat pocket of the accused and was discovered on search by a Police Officer and the accused did not know that he was going to meet a police officer thus but he knew that he might possibly do so he was rightly convicted under s. 20. 66 I. C. 995 : 23 Cr. L. J. 339 : 3 L. L. J. 145.

—an approver should not be tried under s. 20, 19 A. L. J. 717.
—when a case under s. 20 falls the accused may be tried under s. 19 (f) after sanction under s. 29. 34 Ind. C. 321.

—a discovery of arms buried on the information of the accused fulfils the requirements of ss. 19 and 20. 72 P. L. R. 1916 : 33 I. C. 823, 1923 Lah. 434.

—if evidence recorded indicates an offence under s. 20 the M. ought to commit the accused to Sessions Court 20. C. W. N. 732.

—discovery of a pistol on the floor of the shop of the accused while he was absent from the shop does not render him guilty. 1923 A. 33 : 69 I. C. 457 : 20 A. L. J. 855.

—a dagger with detached blade was held to be an arm and concealment thereof was held to be punishable. 12 P. L. R. 1922 : 64 I. C. 847 : 23 Cr. L. J. 3.

S. 22 (Knowingly purchasing unlicensed arms.)

—master is liable for the act of his manager for selling arms to persons not authorised to purchase them. 23 B. 423.

—"delivery into possession" contemplated by this sec. is such a delivery as to give the persons into whose possession the arm

S. 22. (Knowingly purchasing unlicensed arms)—*contd.*

is delivered, control over the arm and authority to use it as an arm. 5 L. B. R. 83, 106 I. C. 689; 29 Cr. L. J. 97; 26 A. L. J. 162.

—where a license holder gives his gun for repair to a licensed gun maker with direction to make it over to his servant after repair, delivery in pursuance of that direction was not illegal. 106 I. C. 689; 29 Cr. L. J. 97. 26 A. L. J. 162

S. 25. (Search and seizure by Magistrate.)

—a special and drastic power is granted to the magistrate by s. 25. Arms Act 9 C. L. J. 293 13 C. W. N. 458; 36 C. 433; 5 M. L. T. 367.

—the District Magistrate must comply with s. 25 of the Arms Act. 39 C. 953 P. C.

—search by night is not illegal and in cases under the Arms Act is not restricted to the procedure laid down in s. 25. 4 Punj. L. R. 481.

—s. 25 of the Arms Act. appears to refer to cases in which either under a license or not under circumstances such

warrant to search premises on information of possession of unlicensed firearms acts as a court. 42 M. 96 *contra* 3 C. L. J. 75; 12 C. W. N. 973.

—conducting a search for arms is not an act done in the discharge of judicial duty. Where the search is for the purpose of discovering arms generally s. 165 does not apply. 3 C. L. J. 75; 12 C. W. N. 973.

—in a general search of arms under s. 25 the Magistrate holding such search must first record the grounds of his belief as directed therein, in order to avail himself of the protection of that sec. from the consequences of his action 36 C. 433; 13 C. W. N. 458; 9 C. L. J. 298, 15 A. 129.

—a search for firearms can duly be made after an order is passed under s. 25 and it must be made in the presence of an officer specially appointed. If the evidence for conviction is sufficient an illegal search does not vitiate it. 47 A. 575-88 I. C. 280 1925 All. 434; 26 Cr. L. J. 1112

—where during search by police under s. 165 Cr. P. C. stolen guns and cartridges are discovered the accused can be convicted under s. 20 and want of compliance with s. 25 cannot save him. 1927 All. 516; 103 I. S. 108; 28 Cr. L. J. 652.

S. 27 Power to exempt.

—there is nothing in the Arms Act to exempt the custodians of a temple from complying with the requirements of the Arms Act either by taking out a license or obtaining exemption under s. 27. 8 C. 473.

—a swordstick different from kirpan so the possession swordstick by a Sikh court be exempted by s. 27. 1938 Lah. 239; 108 I. C. 596; 29 Cr. L. J. 425.

S. 27. Power to exempt—*only*

—there is no provision of law or of any rule having the force of law whereby the Army Regulations of India, can be held legally to restrict the powers exercised by the Governor-General in Council under s. 27. 3 Punj L. R. 13

—a volunteer being an exempted person, is exempted not merely with reference to his duties as a volunteer but generally 22 A. 323

—servant of exempted person carrying the arm is not liable to punishment. 17 A. L. J. 758; 51 Ind. C. 208 20 C. L. J. 432. 22 A. 118. A. W. N. (1891 7) fol.

S. 29 (Sanction for proceedings under s. 19 (1))

—there is no irregularity in procedure if the sanction is obtained before the accused is placed on his trial but after the preparation of the charge sheet, 46 C. L. J. 35 : 1927 Cal. 721 : 104 I. O. 433 : 28 Cr. L. J. 817.

—in a District where lions are notoriously in the habit of injuring crops, a license under form XI rule 16, authorises the holder thereof to drive, in a jungle for lion without taking out a sporting license. 5 M. 26 : 1 Weir 662.

—s. 29 is restricted to offences under s. 19 and does not extend to prosecution under s. 20. 33 Ind. C. 741.

—prosecution under s. 19 (f) requires the previous sanction of the M. 12 Cr. L. J. 234, 9 M. L. T. 475 : 10 Ind. C. 261, 5 M. L. T. 162, 2 Bur. L. J. 203, 9 C. P. L. R. Cr. 26, subsequent sanction does not cure the defect. 5 M. L. T. 162, 4 L. B. R. 247; 8 Cr. L. J. 63, 27 C. 692 but an offence committed many years after notification requires no sanction. P. R. 24 of 1913, 21 Ind. C. 1008

—the word "proceeding" in the sec. means legal proceeding. The mere submission of charge sheet is not institution of proceeding. 107 I. C. 835 : 1928 Pat 146 : 29 Cr. L. J. 301 : 6 Pat 768.

S. 30 (Searches in case of offences under s. 19 (f))

—s. 30 appears to contemplate the presence of some specially empowered officer besides the officer conducting the search. 8 C. 473.

—warrant of Magistrate is not necessary. 16 A. L. J. 721 : 47 Ind. C. 801 : 19 Cr. L. J. 949.

—the Sub-Inspector of Police in charge of a reporting station making the search need not have a license from a magistrate if he be specially empowered by the Local Government in virtue of his office to make such a search. 47 I. O. 801 : 16 A. L. J. 721 : 19 Cr. L. J. 949.

—the expression "in the course of any proceedings instituted" implies that proceedings must have begun, its effect being to cut down the general power by a police officer under s. 165. 1925 Cal. 434 : 26 Cr. L. J. 1112.

S. 30 (Searches in case of offence under s. 19 (f))—contd.

—in the case of a house occupied by a joint family there is the presumption that the head of the family, however old he may be, is in possession of the article found therein. 116 I. C. 718 : 1929 Lah. 872 : 30 Cr. L. J. 668.

S. 31 (Operation of other laws not barred)

—in a case of a technical offence, a nominal sentence is always quite sufficient to meet the ends of justice. 23 P. W. R. 1910 (Cr.)

—where a case might properly have been tried under the Arms Act or the Explosive Act, but the Public Prosecutor did ask the High Court to order a re-trial, the High Court cannot convict the accused under any of those two enactments without a fresh trial. 8 M. L. T. 296.

—concurrent sentence, procedure in case of, 5 Bur. L. R. 26.

Assault, see *es.* 351-358.

Assessors, see, *ss.* 384, 385, 293-295, 309, 319, 321, 326, 332.

Attachment, see *I. P. C.* 379, 424

Attempt, see, *I. P. C.* *ss.* 122, 124 A 161, 307 312, 511.

BAIL AND BAILBOND, See, *ss.* 496-502 Cr. P. C.

Bench or Magistrate, see, *s.* 15, Cr. P. C.

BENEFIT OF DOUBT.

—when the probabilities in favour of the prosecution outweigh those in favour of the defence, but the circumstances throw a reasonable doubt in favour of the accused the accused must get the benefit of that doubt. Cr. Rul. 20 June 1877 : Rat. Un. Cr. 127.

—before the accused can be convicted of an offence, the

R. 1909.

—benefit of doubt must be given to the accused. 90 P. L. R. 1909, 1 P. W. R. 1907 5 Cr. L. J. 57 : 34 P. L. R. 1907

—before an accused can be convicted of an offence every conceivable hypothesis of innocence must be at least reasonably excluded. 7 P. L. R. 1911 : 9 Ind. C. 400 : 12 C. L. J. 69 : 11 P. W. R. 1911 Cr. 5 P. R. 1872 Cr. Ref.

—when the first report does not contain the name of the accused, he is entitled to benefit of doubt. 33 P. W. R. 1911 : 12 Cr. L. J. 561 : 12 Ind. C. 549.

—where there was the greatest doubt as to whether the accused were in fact identified to be the

circumstances of the case make the case doubtful
6 L. L. J. 277.

Benefit of doubt—*confd.*

—where the prosecution evidence is unsatisfactory and doubtful, the Court should give the accused the benefit of doubt. 5 O. L. J. 167 : 46 Ind. C. 145 : 19 Cr. L. J. 689.

—where the case depends mainly upon an alleged confession and there is a conflict as to the manner in which the confession has been obtained, the accused is entitled to benefit of doubt. 119 I. C. 420 : 30 Cr. L. J. 1080

—benefit of doubt means a real and reasonable doubt. When there is no reasonable doubt in the mind of the Judge the accused should be convicted. 1924 All 511

—when in a murder case the identity of the body was not established the remaining evidence was not sufficient to justify the conviction. 76 I. C. 397 : 1924 Lah. 168 : 25 Cr. L. J. 173, 5 L. L. J. 417.

—where the circumstantial evidence relied on does not exclude the reasonable possibility of some person other than the accused having committed the offence the accused must be given benefit of doubt. 25 Cr. L. J. 424. 1923 Lah. 537.

—suspicion however grave can never be regarded as a substitute for proof and conviction cannot be supported on the ground that there is very strong suspicion against the accused. 98 I. C. 190 : 27 Cr. L. J. 1294. 27 Punj. L. R. 615.

BENGAL EXCISE ACT, (ACT V. B. C. OF 1909.)

—the provisions of ss. 102 and 103 of the Cr. P. O. do not apply to searches made under the Excise Act as it contains a special provision relating to search. 54 C. 601 : 1927 Cal. 527 : 31 O. W. N. 667 : 102 I. C. 547 : 28 Cr. L. J. 579.

Bigamy, see, *I. P. C.* ss. 103, 109, 494.

Brothel, see, *Disorderly Houses Act.*

Boundaries, see, *I. P. C.* s. 431.

CALCUTTA SUPPRESSION OF IMMORAL TRAFFIC ACT (XIII OF 1923.)

—living in a brothel for about four days before rescue comes within the words "lives in" in s. 4. (1) and (2) 30 C. W. N. 768 : 1926 Cal. 944 : 27 Cr. L. J. 1066 : 97 I. C. 42.

—removal of girl from brothel and her restoration after her 16th year.

—this are really part and parcel of children particularly of minor girls. The word 'girl' in s. 4 is not inapplicable to a child below sixteen who happens to be married. 56 C. 750 : 48 C. L. J. 586 : 33 C. W. N. 198 : 115 I. C. 266 : 1929 Cal. 99 : 30 Cr. L. J. 440.

—the mere payment of rent by a prostitute to a land-lord will not bring the case within the scope of the Act where the house of

CANTONMENTS ACT (XV OF 1910).

—the act of the cantonment committee is enforcing the water charges in excess of the sanctioned rates is without jurisdiction. 1926 Sind. 130 · 20 S. L. R 325

CANTONMENTS ACT (11 OF 1924).

—the offence under s 118 (1) (a) (iii) is complete if the exposure is wilful or indecent and in a public place. The word "or" in the sub sec should be "and". 1926 All. 263 · 91 I. C. 539 · 27 Cr. L. J. 107.

—a magistrate can convict a male accused of an offence under sec 236 (1). 1926 Bom. 227 · 93 I. C. 1051 · 28 Bom. L. R 298 · 27 Cr. L. J. 555.

—s. 266 lays down that the court must follow the procedure laid down in the Cr. P. C. if the persons mentioned in the sec. initiates the proceedings. 109 I. C. 607 · 29 Cr. L. J. 591

CATTLE TRESPASS ACT (1 OF 1871)**S. 10. Cattle damaging land**

—lessee is the occupier of the land under s 10 and consequently entitled to seize the cattle or cause it to be seized. 23 C. W. N. 387, 50 Ind. C. 1006 · 20 Cr. L. J. 398.

—a person in exclusive possession of a piece of land is the occupier of the land within this section and he, as such occupier, is entitled to seize or cause to be seized any cattle trespassing on the land in his possession. The question of title does not affect the right of the occupier to seize the cattle trespassing on the land in his possession. 31 I. C. 655, 17 Cr. L. J. 63 · 3 P. R. 1916 (Cr), 23 W. R. (Cr) 2 Ref.

—cattle can be seized and impounded only when they are actually trespassing. 1 Weir 709

—for the minor offence, negligence in regard to an animal which strays into the ground of a person not its owner, provision is made in the Cattle Trespass Act section 10; 9 B. 173, Rat Un Cr. 357.

—the peon of an indigo factory which supplied seed to sow and paid for the labour of sowing under an agreement with the raiyat, cannot seize cattle grazing among the indigo stumps, and rescuing the cattle from him is no offence. 9 C. W. N. 614 · 2 C. L. J. 345.

—the right to seize cattle subsists while the cattle are on the land and does not continue even after they have left the land and the owner of the land has no right to go to the owner of the cattle and demand the delivery of the cattle in order to send them to pound. 81 Ind. C. 716 (Nag) · 25 Cr. L. J. 1004.

—a watchman watching crops on land on behalf of a cultivator or occupier is entitled to seize cattle. 1922 P. 317 · 16 Cr. L. J. 772 · 31 Ind. C. 372.

S 11 Cattle damaging public roads, canals and embankments

—s 11 Cattle Trespass Act in which the words "or found straying thereon" occur having been applied to forests by s 69 Forest Act, the seizure by a forest officer of cattle found straying in reserved forest is legal, even though no damage has actually been done. 22 B. 933

—cattle are not liable to seizure by the officers of P. W. D. unless they were trespassing on public property in charge of the Officers of the Department. 24 M. 318

S 19 Officers and pound-keepers not to purchase

—where a Sub-Inspector of Police was charged with having purchased a pony which had been impounded, the Magistrate should have proceeded under a 19 C. T. Act, taken with s 169 I. P. C. 16. W. R. 52. 4 B. L. R. Ap. 1

S 20 Power to make complaint

—illegal seizure of cattle is not offence within the meaning of the Cr. P. C. and therefore compensation cannot be awarded, in such cases, under s 250 Cr. P. C. 9 M. 102, 374, 13 C. 304, 23 C. 248, 442, 18 A. 353 : 16 A. W. N. 98

—the illegal seizure of cattle mentioned in s 20 C. T. Act, is an offence under s 4 cl (a), Cr. P. C. and according to last clause of Sch. II thereof any offence punishable with imprisonment for less than one year or with fine only, is triable by any Magistrate. 34 C. 926, 23 C. 248, 300 and 442, overruled.

—though a complaint under s 20, must be entertained either by a District Magistrate or a Magistrate specially authorised, such Magistrate cannot under s. 192 Sub-S. (1) transfer the case after taking cognizance of it, to any Magistrate as contemplated by the Code 34 C. 926.

—the inclusion in S. 4 (0) of the Cr. P. C. in the definition of "offence" of the words "act in respect of which a complaint may be made under s. 20 of the Cattle Trespass Act" renders it unnecessary for a Magistrate generally empowered under the Cr. P. C. to receive complaints of offences, to be specially authorised by the District Magistrate to receive complaints under that section of the Cattle Trespass Act. 52 M. L. J. 251 : 1927 M. W. N. 167 : 100 I. C. 381 : 1927 Mad. 396 : 28 Cr. L. J. 301 : 50 M. 811 (34 C. 926, 44 B. 42) *Rel. on.*

—illegal seizures alluded to in ss. 20 to 23 are not offences within the Cr. P. C. : so such cases are not triable summarily under Ch. XXII of the Cr. P. C. 23 C. 248, 9 M. 102, 374, 18 A. 353 *but see* 34 C. 926

—a Magistrate taking cognizance of a case under s. 20 may act under a. 6, 44 and 141 of the Cr. P. C. there being nothing against. P. R. 26 of 1879.

—when the cattle is in the custody of another, the owner not acquainted with the facts of the case, cannot complain. 5 L. R. 205.

S. 20. Power to make complaint—contd.

—a M. of the second class authorised under s. 190 to take cognizance of offences upon receiving complaints make cognizance of an offence under s. 20. 44 B. 42 54 Ind. C. 495: 21 Bom. L. R. 1084.

—a suit for malicious prosecution under this sec. lies 31 M. L. J. 479: 20 M. L. T. 308: 37 Ind. C. 374.

—although the General Clause Act applies only to Acts made on or after the 14th January 1997 nevertheless every consideration of justice and expediency would require that the accepted principle which underlies s. 10 of that Act should be applied to a case under the C. Trespass Act. 30 Cr. L. J. 125: 1929 Nag. 96. 113 I. C. 285.

S. 21. Procedure on complaint.

—the complainant in person or an agent personally acquainted with the circumstances, is entitled to complain under s. 21 C. T. Act, 5 Bom. L. R. 205

—it is not necessary that the agent must know all about the matter from what he has seen himself and not from what he has been told by others. 84 Ind. C. 551: 1923 Nag. 156.

S. 22. (Compensation or illegal seizure or detention.)

—proceedings under s. 22 C. T. Act are not strictly criminal but quasi-civil in which a Magistrate can summarily assess and enforce compensation for an actionable injury which are jointly and severally payable by the parties. 14 C. 175.

—under s. 22 costs can be awarded to the complainant as compensation for a loss caused by the seizure and detention of the cattle 7 M. 345.

—where the complaint is lodged by an agent the compensation is to be paid to the owner and not to the agent who is grazier of the cattle. 1929 Nag. 152: 116 I. C. 424: 30 Cr. L. J. 633.

—where no compensation is claimed and no allegation is made as to the loss in the petition of complaint, the M. cannot award compensation. 4 Pat. L. T. 231: 1 Pat. L. R. Cr. 34: 72 Ind. C. 71: 1923 Pat. 292: 24 Cr. L. J. 311, 4 B. R. 11: 6 Cr. L. J. 122.

—there is no restriction that the court cannot award compensation unless it is claimed in the complaint. 1928 Mad. 369: 108 I. C. 80: 29 Cr. L. J. 325, 1923 Pat. 292. *not fol.*

—no sentence of fine can be passed under s. 22; only reasonable compensation is awardable: 27 C. 992: 5 C. W. N. 32, 1 Weir 710, P. R. 25 of 78, P. R. 5 of 1810; it is not one for damage to reputation. P. R. 37 of 1878, 7 M. H. C. Ap. 21.

—s. 22 does not apply where there is no illegal seizure or detention. 22 C. 139, 669.

—where there is land-dispute between the parties, the Magistrate should not refer the parties to civil court but should dispose of the case under s. 22. 22 W. R. 2.

—appeal does not lie from an order under s. 22 awarding compensation for wrongful seizure. 19 M. 233, 15 C. 712, 10 B. 230, 11 M. 359, Cr. R. 4 of 1920, 18 M. L. J. 57: 31 M. 133: 3 M. L. T. 230, 29 M. 517, 4 L. R. R. 10, *contra*. An appeal lies under s. 408 of the Cr.

S. 22 (Compensation or illegal seizure or detention—contd.)

P C from an order of compensation and repayment of fine, etc., passed under this section. 63 I. C. 160 : 23 Bom. L. R. 836 : 22 Cr. L. J. 624 6 Bom Cr. C 85

—when a person detains cattle licensed to graze by the *lambardar* he is guilty of wrongfully impounding cattle under the Cattle Tr Act, even though the license was given by the *lambardar*, without the consent of all the co-aharers in the village. 84 Ind. C. 862 7 N L J 193.

—where two persons are convicted an order not specifying the amount of compensation to be paid by each is not bad. 14 C. 175.

—seizure of cattle by the Municipal servants was found to be illegal as there was no damage to the Municipal trees. 16 A. L. J. 148 44 Ind. C. 592, 19 Cr. L. J. 368.

—suit for damages for seizure is not barred by this sec. 16 C. 159, 15 W R 279, 44 Ind. C. 237 (N) *contra* 2 C. L. R. 344, the deft. is to justify his conduct. 44 Ind. C. 237, 241 (N.)

S. 23 (Recovery of compensation).

—no appeal lies from an order under s. 23 P. R. 22 of 1886.

S. 24. (Penalty for forcible opposition or rescue).

—no conviction can be had under s. 24 C. T. Act unless it is proved that the cattle rescued was lawfully seized within the meaning of the provisions of the Act, 23 C. W. N. 378 : 50 I. C. 1006 : 20 Cr. L. J. 398, 1 Pet. L. T. 176 : 57 Ind. C. 464, 43 Ind. C. 818 : 4 Pat. L. W. 40 19 Cr L. J. 202.

—if the cattle were not "liable to be seized" their rescue is no offence and the fact that rescuer had a special remedy under s. 20 of the Act, does not affect the matter. 24 M. 318.

—to constitute an offence under this sec it must be proved that the cattle rescued were liable to be seized under the Cattle Trespass Act, 92 I. C. 697 : 1926 All 276 : 27 Cr. L. J. 313.

—if the cattle are no longer on the land of the complainant when they are seized by him an opposition by the accused is no offence P. R 4 of 1891.

—to resist the seizure of cattle after they have escaped from the pound is not punishable under s. 24 Rat. Un. Cr. 294

—where the accused removed bullocks from a pound and returned them to the true owner, he was not guilty of theft but only of an offence under this section, 1 Weir 716.

—driving cattle by shouts and cries constitute rescuing and inducing an animal to move may amount to using force within s. 349 ill. (b) I. P. C. 72 I. C. 616 : 32 M. L. T. 365 : 1923 M. W. N. 437 : 24 Cr. L. J. 456 : 1923 Mad. 608

—for a conviction under s. 24 it must be proved that the accused removed the cattle from the pound and that the accused proved and there must be a finding whether the cattle were lawfully seized and whether they did damage to the crop. 43 I. C. 1006 : 20 Cr. L. J. 398 : 1923 M. W. N. 437 : 24 Cr. L. J. 456 : 1923 Mad. 608.

S. 20. Power to make complaint—*contd.*

—a M. of the second class authorised under s. 190 to take cognizance of offences committed under this sec. has 31 M.

L. J. 3

—although the General Clauses Act only to Acts made every consideration the accepted principle applied to a case under s. 96 113 I. C. 285.

S. 21. Procedure on complaint.

—the complainant in person or an agent personally acquainted with the circumstances, is entitled to complain under s. 21 C. T. Act, 5 Bom. L. R. 205

—it is not necessary that the agent must know all about the matter from what he has seen himself and not from what he has been told by others. 84 Ind. C. 551 : 1923 Nag. 156.

S. 22. (Compensation on illegal seizure or detention.)

—proceedings under s. 22 C. T. Act are not strictly criminal but quasi-civil in which a Magistrate can summarily assess and enforce compensation for an actionable injury which are jointly and severally payable by the parties. 14 C 175

—under s. 22 costs can be awarded to the complainant as compensation for a loss caused by the seizure and detention of the cattle 7 M. 345.

—where the complaint is lodged by an agent the compensation is to be paid to the owner and not to the agent who is grazer of the cattle. 1929 Neg. 152 : 116 I. C. 424 : 30 Cr. L. J. 633.

—where no compensation is claimed and no allegation is made as to the loss in the petition of complaint, the M. cannot t. L. R. Cr. 34 : 72 Ind. 11, 6 Cr. L. J. 122.

cannot award compensation 1928 Mad. 369 : 103 I.

—no sentence of fine can be passed under s. 22; only reasonable compensation is awardable; 27 C. 992; 5 C. W. N. 32, 1 Weir 710, P. R. 25 of 78, P. R. 5 of 1810, it is not one for damage to reputation. P. R. 37 of 1878, 7 M. H. C. Ap 21.

—s. 22 does not apply where there is no illegal seizure or detention. 22 C. 133, 669.

—where there is land-dispute between the parties, the Magistrate should not refer the parties to civil court but should dispose of the case under s. 22. 22 W. R. 2.

—appeal does not lie from an order under s. 22 awarding compensation for wrongful seizure. 19 M. 238, 15 C. 712, 10 B 230, 11 M. 359, Cr. R. 4 of 1890, 18 M. L. J. 57 : 31 M. 133 : 3 M. L. T. 230, 29 M. 517, 4 L. B. R. 10, *contra*. An appeal lies under s. 408 of the Cr.

S. 22 (Compensation or illegal seizure or detention—contd.)

P. C. from an order of compensation and repayment of fine, etc., passed under this section. 63 I. C. 160 : 23 Bom. L. R. 836 : 22 Cr. L. J. 624 : 6 Bom. Cr. C. 85.

—when a person detains cattle licensed to graze by the *lambardar* he is guilty of wrongfully impounding cattle under the Cattle Tr. Act, even though the license was given by the *lambardar*, without the consent of all the co-sharers in the village. 84 Ind. C. 862 : 7 N. L. J. 193.

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—no conviction can be had under s. 24 C. T. Act unless it is proved that the cattle rescued was lawfully seized within the meaning of the provisions of the Act, 23 C. W. N. 378 : 50 I. C. 1006 : 20 Cr. L. J. 398, 1 Pat. L. T. 176 : 57 Ind. C. 464, 43 Ind. C. 618 : 4 Pat. L. W. 40 : 19 Cr. L. J. 202.

—If the cattle were not "liable to be seized" their rescue is no offence and the fact that rescuer had a special remedy under s. 20 of the Act, does not affect the matter. 24 M. 318.

—to constitute an offence under this sec. it must be proved that the cattle rescued were liable to be seized under the Cattle Trespass Act, 92 I. C. 697 : 1926 All. 276 : 27 Cr. L. J. 313.

—If the cattle are no longer on the land of the complainant when they are seized by him an opposition by the accused is no offence P. R. 4 of 1891.

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—driving cattle by shouts and cries constitute rescuing and inducing an animal to move may amount to using force within s. 349 ill. (b) I. P. C. 72 I. C. 616 : 32 M. L. T. 365 : 1923 M. W. N. 437 : 24 Cr. L. J. 456 : 1923 Mad. 608.

—for a conviction under s. 24 it is not enough that the accused removed the cattle from the pound, the prosecution must prove and there must be a finding of the court upon the point whether the cattle were lawfully seized while trespassing, doing damage to the crop. 43 I. C. 618 : 4 Pat. L. W. 40 : 19 C. 202.

S. 24. (Penalty for forcible opposition or rescue)—*contd.*

—before there can be a conviction under this sec there must be finding on evidence that damage was caused and cattle were liable to be seized. 57 Ind C 461: 1 Pat L T 176: 21 Cr L J 610, 43 Ind C 445: 19 Cr L J 157, 1 Pat L J 371.

—where a charge is framed under s 379 the accused cannot be punished under the sec. without framing a charge under this sec. and without giving the accused opportunity to produce evidence. 4 Pat. L. W. 40. 43 Ind C 618: 19 Cr L J. 202

—where a buffalo belonging to the accused was impounded but was rescued by him after opening a door by slipping the chain over the lock and he was convicted of offences under s. 24 Cattle Tr. Act as well as under Ss 451 and 380 I P C but there was no finding that the pound from which the buffalo was rescued was a building or house, conviction under ss. 380 and 451 were bad, the accused was liable to punishment under s. 24 C Tr Act and Ss 387 and 441 I P. C. 1927 Mad 343. 100 I. C 120. 28 Cr L. J 248: 52 M. L. J. 143

—separate punishment under the Penal Code as well as under this Act is illegal, s. 71 I. P. C. being applicable to separate punishment for an offence against the same law. 43 Ind C 445. 19 Cr L. J. 157.

—an offence under this sec is not compoundable, but if the complainant does not adduce evidence the case being a summons case the effect would be an acquittal. 42 A 202. 18 A. L. J. 96: 55 Ind. C. 463: 21 Cr. L J. 305.

—cattle which had strayed into the lands of the accused were being taken to the pound when the complainants tried to rescue them by force. The accused in trying to prevent the rescue caused grievous hurt to the complainants, held that they only exercised the right of private defence and were not guilty. The fact that the accused were not the owners of the cattle does not affect the question. 86 I. C. 988: 25 Cr L. J. 924.

S. 26. (Penalty for damages caused.)

—under s. 26 in case of animals other than pigs causing damage, intention to cause damage or knowledge that damage is likely to be caused, must be proved, Cr Rul. 11. 1. 12, 1 Weir 762.

—a personal neglect on the part of the owner and his allowing his cattle to trespass, must, if they cannot be inferred from the circumstances of the case be shown affirmatively to exist. Cr. Rul. 36 of 1896.

—where it appeared that on previous occasions the cattle of the accused were impounded a number of times for similar acts, there was clear intention in the accused to have their cattle grazed on crops at the expense of others. 50 Ind. C. 995: 21 Bom. L. R. 247: 5 Bom. Cr. C. 1: 20 Cr. L. J. 387.

—rescuing cattle while grazing on the bank of a canal is punishable if the land is proved to be public property in charge of P. W. D. 24 M. 318.

S. 27. (Penalty of pound-keeper.)

—false entry in the accounts by a pound-keeper was held to be punishable not under s. 27, but under ss. 409 and 511 I. P. C. Cr. Rul. 2 of 1893

—where a person who was not a pound-keeper but was merely entertained by the police patrol, was convicted by a Magistrate under s. 27, the conviction was set aside, 9 B. H. C. 664

—the maintenance of private cattle pounds was incompatible with the provisions of C. T. Act 39 C. 615

CERTIFICATE

—to convict a person under s. 197 I. P. C. for issuing or signing false certificate, proof intent to cause injury is not necessary. (1878) P. R. No. 15 of 1879

—alteration of name and age in an Educational certificate and use thereof to obtain an official appointment, constitute in the absence of satisfactory explanation offences under ss. 466, and 471 2 L. B. R. 316

—where the accused applied to the Superintendent of police, for an employment and presented one false and another altered certificate, he was guilty under ss. 463 and 471 I. P. C. 22 B. 768

—where the accused forged certificate of competency as an engine room first trial he was held guilty under ss. 471 and 463n 25 C. 512 F. B.

—where the accused by false statements obtained a certificate entitling him to a refund of octroi duty but was arrested before he applied for the refund, it was held that this amounted to a preparation only, for he might have torn up the certificate or changed his mind. 8 A. 304.

—a certificate of doctors as regards age is not admissible in evidence. 21 C. W. N. 257 P. C.

—a certificate under sec. 197 I. P. C. means either certificate that is required by law to be given or signed or that relates to any fact of which such certificate is by law admissible in evidence. 23 C. L. J. 423; 20 C. W. N. 520; 33 L. C. 316; 17 Cr. L. J. 140.

—a certificate of guardianship does not prove the age of a minor. 38 C. L. J. 185; 71 L. C. 335.

For "Certificate of Political Agent," see, Cr. P. C. S. 188.

For "Certificate of Public Prosecutor," see, Cr. P. C. S. 339.

For "Certificate of Magistrate," see, Cr. P. C. S. 364.

CERTIFIED COPY.

—a copyist who made an incorrect copy of a document filed with a record was punished under s. 197 I. P. C. P. R. No. 16 of 1879, (1878) 15 P. R. 1879.

—where a person who is bound to give a true copy of a document gives a true copy, he cannot be legally convicted of the offence of forgery punishable under this section, merely because the original of which he gives a true copy contains a statement

Certified copy—contd.

which is false, and is known or believed by him to be such. Cr. R. 42 of 1891 Un Cr. C. 485.

—certified copy is no proof of genuineness of the original (1889) 9 W. N. 90.

—a prisoner is entitled to copies of all documents for which he applies and which he thinks necessary for his defence. 14 W.R. 77

Charge see Cr. P. C. ss. 221, 240.

Cheating, see I. P. C. ss. 415-420.

Child, see I. P. C. ss. 82, 83, 89-92, 108, 315-318 361-373, 491.

Chowkidar, see Cr. P. C. ss. 56 and 59.

CIRCUMSTANTIAL EVIDENCE.

—in order to justify the reference of guilt from purely circumstantial evidence, the evidence must be such as to be incompatible and incapable of explanation other than that of the guilt. 81
21, 65 P. L. R. 1917: 42 Ind. C.
278, 75 Ind. C. 753, 5 L. L. J. 40:
L. T. 684 22 Cr. L. J. 154,

—to justify conviction circumstantial evidence must be incompatible with accused's innocence, 9 Lab. L. J. 39 7 Lab. 561: 27 Cr. L. J. 1004: 96 I. C. 860: 1926 Lab. 691

—where no direct evidence of murder is adduced and the case depends only on circumstantial evidence, the evidence must be inconsistent and incompatible with the innocence of the accused. 98 I. C. 241: 27 Cr. L. J. 1297, 56 C. 738 33 C. W. N. 211: 1929 Cal. 37: 116 I. C. 378

—where the evidence against the accused in a case of murder by poisoning is purely circumstantial and that evidence does not exclude the reasonable possibility of some person other than the accused having committed the murder the accused must be given the benefit of doubt 77 Ind. C. 600: 25 Cr. L. J. 424. 1923 Lab. 537.

—where although the evidence is circumstantial, still the evidence is such as to prove the guilt of the accused beyond reasonable doubt and no explanation is given in regard to the incriminating circumstances, the court is justified in convicting the accused, 27 O. C. 188.

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18 Cr. L. J. 1004 and Cr. C.

—where the prosecution comes into a court with a story which cannot be believed as to its essential details it is impossible to rely on a part of the story for the purpose of convicting the accused. The court cannot reconstruct a new case. 81 I. C. 212:

Circumstantial evidence—*confd.*

5 Pat. L. T. 635. 1924 Pat. 813 : 25 Cr. L. J. 724, (47 I. C. 73, 17 C. W. N. 538) *Ref.* see also 47 I. C. 73 : 1918 Pat. 288 ; 19 Cr. L. J. 877 : 4 Pat. L. W. 157.

—a conviction based upon purely circumstantial evidence must be treated with the greatest caution and subjected to the closest scrutiny. 76 Ind. C. 97.

—in cases of circumstantial evidence the facts found should be inconsistent on a reasonable hypothesis with the innocence of the accused before he is convicted. 41 C. 621 : 21 Ind. C. 900 : 14 Cr. L. J. 660.

—weakness of the defence story is not ground for holding accused guilty 41 M. L. J. 243 ; 32 M. L. T. 313 : 72 Ind. C. 538

—the circumstantial evidence must be exhaustive and exclude the possibility of guilt of any other person and must point conclusively to the complicity of the accused. The term 'exhaustive' must not be taken to mean that every incident short of the actual killing must be proved by positive evidence, and the term possibility must not be treated as signifying "physical possibility." 34 P. R. 1916 Cr. 38 Ind. C. 759 18 Cr. L. J. 375, 18 C. W. N. 114.

—it would not be safe to convict the accused from the mere fact that there is strong suspicion against him. 66 Ind. C. 187 : 23 Cr. L. J. 251.

—where there is only circumstantial evidence to connect the accused with the crime, it is most necessary that every link in the chain of evidence should be carefully tested specially in cases of a charge of murder. No link should be missing and every link should be proved. 1922 Pat 582 : 1 P. 630

—where a court finds the accused guilty of murder upon merely circumstantial evidence possibility of error may be recognised and lesser punishment should be inflicted. 76 Ind. C. 97.

—when no *prima facie* case is made out the accused may rely on the presumption of innocence or on the infirmity of the presumption of evidence. But when *prima facie* case is made out the accused is to explain the circumstances standing against him 7 S. L. R. 109 : 24 Ind. C. 555.

—proof of intention or knowledge such as is mentioned in s. 373 is almost entirely a matter of inference from circumstances. 35 C. L. J. 451.

—the fact of misappropriation can be proved as well by circumstantial evidence as by direct evidence. 34 C. L. J. 200.

—the mere existence of suspicious circumstances against the accused when his guilt is not proved beyond reasonable doubt is not sufficient to justify conviction. 54 Ind. C. 893 : 18 A. L. J. 67 : 21 Cr. L. J. 189.

—the existence of general hostility, general enmity and a desire however death of and but is not a particular

CIVIL DISPUTE.

—parties should not be encouraged to resort to the Criminal Courts where the dispute can more appropriately be decided by a Civil Court. The tendency on the part of the litigants to do so should be checked by Criminal Courts who should be on their guard against leading their aid to such procedure 84 Ind C 351, 26 Cr. L. J. 287 (L)

—where the matter is purely a civil matter or more likely to be fully and adequately dealt with in the civil proceedings and prosecution is initiated to satisfy private spite, criminal proceedings should be stayed. 55 Ind C 721, 21 Cr. L. J. 353

—it is ordinarily undesirable to institute Criminal proceedings until the determination of Civil proceedings in which the same questions are involved Criminal proceedings lend themselves to the unscrupulous application of improper pressure with a view to influence the course of the civil proceedings 24 C. W. N. 418; 56 Ind C. 577.

—the M. cannot go behind the decision of the civil court and cannot question the jurisdiction of the civil court 27 C. W. N. 267.

For other cases, see Cr. P. C. S. 145

Cognizance, see Cr. P. C. ss 100, 103, 104

Commitment, see Cr. P. C. ss, 213-215

Common Intention, see. I P C s 14

COMPANIES ACT. (VII of 1913)

S. 2 (ii).

—auditor deliberately passing over manifestly illegal payment, without demanding explanation is guilty of misdemeanour 1929 All. 826
S. 2 (9), 32, 287,—

—unless a person is in charge of the business he cannot be deemed to be the manager thereof A person entrusted with the business of a branch only cannot be regarded as the manager and hence failure to give notice of his charge is not an offence under s. 87. 43 I. C. 791; 47 P. R. 1917 (Cr). 19 Cr. L. J. 215.

S. 32, (ss. 48, 50 of Act VI of 1882)

—where a paid Managing Director and the Chief Secretary of a company were prosecuted under s. 48 and convicted under s. 50 of Act VI of 1882, held that the resignation of their positions as managing Director and Chief Secretary before the prosecution without the resignation of their posts as directors would not absolve them of their liability under s. 50 of the Act and the plea of ignorance of law could not be accepted. 23 I. C. 508; 15 Cr. L. J. 300; 38 P. W. R. 194 (Cr).

—where there was no proof that the directors knowingly or wilfully authorised or permitted the company to make default in filing the shareholder's list the accused were not guilty under s. 32 (4). 1929 Lah. 836, 10 Lah. 521.

S. 76

—where within 15 months of the last general meeting an extraordinary general meeting has been held no offence under s

S. 76—*contd.*

76 can be held as there is nothing in s. 76 differentiating an extraordinary general meeting from a general meeting. 54 I C. 491; 21 Cr. L. J. 94; 11 P. L. R. 171. *Contra* where no general meeting within the meaning of the term under the Articles of Association was held according to sec 76 of the Companies Act and a balance-sheet audited by the auditors was prepared and read in a general meeting, the Company and its officers clearly committed a default under ss 76 and 131. The sending in a requisition by certain share-holders to the Directors for the holding of an extraordinary meeting accordingly cannot be a compliance with the provisions of s. 76 of the Act. 24 Cr. L. J. 319

S. 87

—a person entrusted with business of a branch cannot be regarded as the manager of the Company, so a failure to give notice of a charge of the manager of a branch is not an offence under s. 87. 43 I C. 721; 19 Cr. L. J. 215; 47 P. R. 1917 (Cr.)

S. 104

—it is the duty of the Directors and the Managers of a Company to furnish the returns that are necessary under s. 101 (1), the plea of ignorance of the provisions of the law in this respect cannot avail them as an excuse and their default to comply with this provision of law renders them liable to conviction under s. 104 (3). 52 I C. 885; 20 Cr. L. J. 725; 26 P. R. 1019 (Cr.), 1916 P. R. 14 and 18 (Cr.), 1914 P. L. R. 161). *Ref*

S. 132, 282.

—when bad or doubtful debts are not shown under book debts it constitutes an offence under s. 282, 102 I. C. 501; 29 Bom. L. R. 722; 1927 Bom 414; 28 Cr. L. J. 568.

S. 134 (S. 74 of Act VI of 1882)

—the Director of Joint Stock Company cannot plead in answer to a charge under s. 134, his prior default in respect of the calling of the general meeting and of placing before the Company at suc
W. N. Balance sheet. 22 (1)
87; 27 (1), L. J. 85.
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—a company is not by law obliged to file a balance sheet till a year is complete from its registration and a Director of the company who resigns office before the expiry of the year cannot be fined with liability under S 74 of the Companies Act VI of 1882 for failure to file a balance sheet with the Registrar. Act. VI

S. 134 (S. 74 of Act VI of 1882)—*contd.*

of 1882 is not precise on the point, but under the English Law the mere ceasing to hold the necessary qualification of shares involves vacation of his office by a Director and it has been made clear by S. 85 (2) of the New Act VII of 1913 23 I. C. 748; 15 Cr. L. J. 380; 39 P. W. R. 1914 (Cr.)

—every limited Banking Company is bound to publish a statement provided in the third Schedule on dates specified in sub-sec. (1) of s. 136, default in it is punishable under sub-sec. (4). It cannot be pleaded that the statements could not be published in time on account of the change in the closing date of the financial year of the Company 48 B. 305; 82 I. C. 58; 1924 Bom. 308. 25 Cr. L. J. 1194.

—a Magistrate has jurisdiction to entertain a complaint under this section (old s. 74) against a Director of a Company for failure to comply with the provisions of that section and for a misappropriation of money or falsification of accounts but ordinarily a Magistrate ought to be chary of proceeding except after reference to the Registrar or on the complaint of responsible person 12 I. C. 972; 8 A. L. J. 1260; 12 Cr. L. J. 596.

—the officers of the Registrar of Joint Stock Companies being in Calcutta the Precedency Magistrate of Calcutta has jurisdiction in respect of a charge under this section against the Director of a Joint Stock Company which has its place of business outside Calcutta 22 C. W. N. 96; 45 C. 486 27 C. L. J. 85; 41 I. C. 307; 18 Cr. L. J. 787.

—an order Directing the Directors individually to pay the fine imposed on the Company is illegal. 1924 Lab. 489; 6 L. L. J. 160.

—the penalty prescribed by S. 74. (old) is a fixed and not a maximum penalty. 23 I. C. 468; 15 Cr. L. J. 260; 37 P. L. R. 1914; 15 Cr. L. J. 260, 35 A. 173 *fol.* (78 P. L. R. 1905, 19 P. W. R. 1910. 29 P. W. R. 1913), *Ref.*

Ss. 207, 208, 211

the Legislature was to have of the Registrar of the person have been legally appointed and who is acting as a legally appointed liquidator, hence a *defacto* liquidator of a company which is being voluntarily wound up (though his appointment may be imperfect) and who acts as such must carry out the duties as well as exercise the rights of a liquidator and must make a return of his appointment and obtain his retirement in a proper way giving notice of that also, 37 A. 412; 39 I. C. 478; 15 A. L. J. 346; 18 Cr. L. J. 510

S. 248:

—Rule 15 made under s. 248 by the Local Govt. is not intended to exclude any other competent party from filing a complaint. 1928 Nag. 186; 29 Cr. L. J. 581; 109 I. C. 597.

S. 282.

—false declarations in the application to the Registrar for permission to start business that all the directors had paid up on their shares while three out of four directors did discharge their deligation brings the declarant within S. 238 of the Act. 46 A. 218 : 77 I. C. 826 : 25 Cr. L. J. 474 : 1921 All. 314 : 22 A. L. J. 83.

Compensation, see *Cr. P. C. s. 250.*

Complainant, see *Cr. P. C. ss. 190, 200, 247.*

Complaint, see *Cr. P. C. ss. 190, 203, 517*

Compromise of or compounding Cases, see *Cr. P. C. s. 345.*

CONFESSION

Sub. headings of notes

- (1) Statement of accused.
- (2) Confession, what is and how to be proved and how far evidence
- (3) Confession voluntarily made, a 24 Evi. Act,
- (4) Confession involuntarily made *i.e.* under compulsion, threat, promise *etc.* a 24 Evi. Act
- (5) Confession to Police Officer. S 25 Evi. Act
- (6) Confession while under Police custody S. 26 Evi. Act.
- (7) Confession to person in authority.
- (8) Confession leading to discovery of fact. S 27 Evi. Act.
- (9) Confession of co-accused a. 30 Evi. Act.
- (10) Retracted confession, admissibility of.
- (11) Uncorroborated confession.
- (12) Recording of confession, see *s. 164 Cr. P. C.*
- (1) Statement of accused.

—statements made by accused to a Police Officer are admissible as admissions against the accused under ss. 17 and 18 of the Evidence Act, but not in his favour. 41 C. L. J. 253 : 1927 Cal. 17 : 54 C. 237 : 99 I. C. 227.

—statement on oath made by the accused before the Coroner at the time of the inquest is admissible in evidence at the trial as a statement made by a party to a proceeding under ss. 18 and 21 of the Evidence Act. 93 I. C. 690 : 1926 Bom. 466 - 50 B. 111 : 27 Cr. L. J. 466; *Contra.* it is not admissible. 50 B. 56 : 93 I. C. 225 : 1929 Bom. 144 : 27 Cr. L. J. 433.

—a statement made to a Police officer but not amounting to a confession may be used against the maker of it. 20 A. L. J. 178 : 65 I. C. 849.

—s. 25 Evi. Act does not exclude all statements by an accused to the Police but only confessions. There is a distinction between mere admission and confession which are statements either directly admitting guilt or suggesting the inference of guilt, 41 C. 602.

(2) Confession, what is and how to be proved and how far evidence.

—a confession is an admission made at any time by a person charged with a crime, stating or suggesting the inference that he committed the crime 5 L. B. R. 131; 4 Ind. C. 1023.

—s. 24 does not exclude confession of approver under a. 339 (2) Cr. P. C., 29 Cr. L. J. 413; 1928 Lah. 320; 108 I. C. 514 F. B.

—an admission of all the ingredients required to constitute an offence is a confession 24 P. W. R. 1909

—a confession does not become inadmissible in evidence simply because there is in it false statement on a material point. (1883) A. W. N. 148.

—the word confession as used in the Evidence Act, must not be construed as including a mere inculpatory admission, falling short of being an admission of guilt. 7 A. 646.

—"Huzur, kasur map kiyajai, ab aise kabhi nahin hoga" (your honor will please pardon the fault, in future no such thing will happen) is not an expression of confession. 14 C. L. J. 652.

—a confession must be considered as a whole. Cr. R. 19 of 1884, 8 W. R. 38, 25 W. R. 15, 23; 1 Burma 324, 327 P. R. 4 of 1872.

—a confession must be read and accepted as a whole unless there is evidence to contradict any portion in which case that portion may be rejected. 1926 Lah. 554; 99 I. C. 71; 28 Cr. L. J. 39.

—the words actually used by the accused ought to be ascertained 10 B. L. R. 332, (1883) 3 W. N. 12.

—the strictest precision should be enjoined on the witness proving the confession so that there may be no room for mistake or misunderstanding. 6 A. 509; (1884) W. N. 221, 14 B. 260 F. B., 11 C. 635, 2 L. B. R. 168.

—the tests for appreciating the evidence of witnesses cannot appropriately be applied, in estimating the value to be attached to a confession. 6 Bom. L. R. 773.

—the confession of accused in one case in which he was convicted cannot be used against him in another case, unless they are deposed to on oath by the person who took them down or by some one else who heard them. 10 W. R. 56, 11 C. 580.

—a police officer should not be permitted to depose that the accused had confessed to him. 16 C. W. N. 238.

—in case of extra-judicial-confession the court is to scrutinise the whole of the material before it. 81 Ind. C. 530 (Lahore), 6 L. L. J. 208.

—in order to make a confession irrelevant, it must be shown that the confession itself was improperly made. 9 Bom. L. R. 789.

—a confession made to a Magistrate in a Native State is admissible in evidence in a trial in British India if it is duly recorded in proceedings under and in the manner required by the Cr. P. C. 2 P. R. 1909; 7 P. W. R. 1909, 69 Ind. C. 257; 23 Cr. L. J. 673.

(2) Confession, what is and how to be proved and how far evidence - *contd.*

—a confession made to a private individual may be evidence against the prisoner if proved by the person before whom the confession was made. 13 W. R. 69.

—evidence of admission of guilt to villagers may be as strong evidence as confession before Magistrate. 1928 Oudh 393: 5 O. W. N. 698

—a confession made by a prisoner in a private conversation which was overheard, has been held to be admissible. 7 W. R. Cr. 56

—confession must be read as a whole. 99 I. C. 71: 28 Cr. L. J. 39

(3) Confession voluntarily made. S. 24 Evl. Act

—a confession made voluntarily is admissible under s. 24 Evl. Act 45 A 300

—a confession against oneself made to a witness with the idea that it would be to his advantage is admissible in evidence. 1929 Mad. 92.

—the statement of a prisoner, whether taken as a confession or on examination, may be received in evidence 5 W. R. 1.

—but it must be voluntarily made and substantially true, 10 Cr. L. J. 200

—the Judge is to decide whether it is voluntarily made and the jury is to say whether it is true or not. 11 Bom. L. R. 332: 2 Ind. C. 517.

—a Judge ought to be satisfied that a confession was voluntarily made before it can be even admissible in evidence. 8 Bom. L. R. 697.

—where the confession appears to be made voluntarily, and where it agrees with all the circumstantial evidence in the case and the account contained in it is not an improbable one, the confession can be accepted as true. Cr. Rul. 30 July, 1197: Rat. Un. Cr. 867.

—the circumstance that the confession purported to be made voluntarily is one to be taken into account and is a fact of which the accused person may reasonably be expected to give some satisfactory explanation. 22 W. R. 51 of 87.

(4) Confession involuntarily made i.e. under compulsion, threat or promise, etc. S. 24. Evl. Act,

—it is improper to attempt to make an accused person, before any evidence is recorded, confess his guilt and admit facts that may go to incriminate him 2 C. W. N. 702, 8 C. W. N. 22, 13 C. W. N. 197, 4. N. L. R. 163, 6 C. L. R. 431.

—where the accused makes a statement in writing containing an allegation from which it appears that it was not voluntarily made, it is inadmissible. 37 C. 735.

—where a statement is elicited by a question, it is inadmissible under s. 164 Cr. P. C.

✓ (4) Confession involuntarily made i.e. under compulsion, threat or promise etc S. 24 Evl. Act—*contd.*

s. 24 Evl. Act, though such circumstance may be material on the question of its voluntariness 37 C 467.

—when questions were put which elicited a statement of a confessional nature, such examination was wholly inadmissible. 25 C. L. J. 323.

—under s 24 Evl. Act, the confession becomes irrelevant if it was obtained by inducement, threat or promise. 25 B. 543; 3 Bom. L. R. 122, but admissions which lead to a discovery of a certain fact is admissible. P R 8 of 1882, 6 A. 509; (1834) W. N. 219, 24 W. R. 36, 14 B. 26) F. B.

—to apply s 24 the inducement or promise must be given to the accused by some person who had authority to give it. Idle hope such as that the accused will be pardoned if he makes the disclosure is irrelevant and does not render the confession inadmissible. 32 C. W. N. 616 109 I. C. 225; 1928 Cal. 500; 29 Cr. L. J. 497. 11 Lah. L. J. 5; 30 Cr. L. J. 49; 113 I. C. 65

—confession duly received under s. 161 Cr. P. C. is admissible unless rebutted by s 24 Evl. Act; the subsequent retraction is not enough in all cases to make it appear to have been unlawfully induced. 2 Bom. L. R. 761 25 B. 163.

—a statement made under promise of pardon is no evidence against a prisoner. 8 W. R. 53; 45 A. 933; 74 I. C. 529.

—a Magistrate acts without due discretion when as a prosecutor, he holds out promises to the accused as an inducement to them to confess 1 W. R. 24

—statement made by a person under promise of pardon who escapes thereafter cannot be used against him in his subsequent trial. 8 W. R. 53; P. R. 9, 1869, P. R. 8 of 1862 Cr. 5 N. W. P. 86.

—tender of pardon by the Local Government is not inducement or threat illegally held out to an accused. 5 C. L. J. 224.

—s 24 does not exclude admissions of an approver made under s 339 (2) Cr. P. C. as the latter sec. contemplates a full and true disclosure made upon the inducement or promise of a pardon and not a disclosure induced as a result of undue pressure. 9 Lah. 608; 1928 Lah. 320 108 I. C. 514 29 Cr. L. J. 413, 5 A. L. J. 691 *fol.*

—the statement of an approver is a confession of guilt in respect of the crime for which the approver is tried and if it is withdrawn before the committing Magistrate it must be considered as retracted confession and must be corroborated by extrinsic evidence. 9 Lah. 608; 108 I. C. 514; 1928 Lah. 320; 29 Cr. L. J. 413; 29 Punj L. R. 165.

rdon is not admissible

promises of immunity

B. H. C. 358; 91 I. C.

(4) Confession involuntarily made t.e. under compulsion threat or promise etc. S. 24 Evl. Act—*contd.*

—confession under threat is not admissible although threat was used not for the purpose of extorting confession. 10 B. L. R. p 1

—circumstances under which confession was made, must be enquired into by the Sessions Judge on appeal 8 B H C 126, 25 B. 513 : 3 Bom L R 122, 13 C. W. N. 861 : 9 C. L. J. 663.

—in the absence of evidence that a confession of an accused has been induced by pressure it is not to be presumed that such confession was thus induced. 11 B H C 137, 22 C. W. N. 809

—if in the circumstances of the case it appears that there is reason to suspect that the confession was obtained by inducement the prosecution must show that the confession was freely made 26 C W N 54.

—it is not possible for a court to say that the making of the confession "appears" to it to have been caused by any inducement, threat or promise except upon evidence before it 4 Pat L. T. 186 : 73 I. C. 961 : 103 I C 337. 1928 Lah 676 : 29 Cr. L. J. 385. The influence may be suggested by the confession itself or by the evidence of the prosecution or by the evidence adduced by the accused.

... which the court is
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... 87 1928 Lab. 676 :
29 Cr L J 385.

—where the case against the accused mainly depends upon an alleged confession and there is conflict as to how it was obtained the accused is entitled to benefit of doubt. 119 I C. 420 : 30 Cr. L. J. 1080.

—the expression used in sec. 24 Evl Act "as if it appears" and not "proved", consequently though the accused has not adduced evidence to substantiate the allegation that the confession was obtained by threat or inducement it is still open to him to show that the circumstances under which it was made would justify that inference, 33 C. W. N. 1112 : 1929 Cr. C. 362 : 1929 Cal. 726.

—confession was not admitted in evidence as the ill-usage, unjustifiable violence and illegal detention of the accused vitiated its voluntary character. 1 Bom. L. R 357

—a confession caused by illegal inducement or by illegal detention of the accused's relatives is irrelevant and the question of its truth is immaterial. 11 Cr. L. J. 41 : 4 Ind. C. 759

—when a confession made to a Magistrate is defective as made under undue influence, its defect is not counteracted except by a consequent discovery of a relevant fact. 3 B. 12, 26 C. 569.

(5) Confession to Police Officer. S. 25 Evl. Act.

—the term "Police-officer" is not to be read in a technical sense but in its more comprehensive and popular sense; the Deputy-Commissioner of Police in Calcutta who was also a magistrate, accordingly held to be Police officer within the meaning of

(5) Confession to Police officer. S. 25 Evi Act.—*contd.*

1. C. 207; 25 W. R. 26, 26 C 569, 22 B 235, 25 C. 711, 17 B. 485
fol. 2 C W. N. 71 *Dist* 10 M. L. J. 147 *R. f.* 2 M. L. T. 414; 6 C.
 L. J. 164, 32 B 111 F. B. *Expl.* 71 *Ind.* C. 360, see also 23 N. L.
 R. 23; 101 I. C. 599, 1927 Nag. 222; 28 Cr. L. J. 477.

—s. 25 Evi. Act applies to every Police-officer and is not to be
 restricted to the officers of the Regular Police force. 26 C. 569.

—Excise Officers are not police officers and confessions made
 to them are not inadmissible. 54 C 601. 31 C. W. N. 667; 1927
 Cal. 527; 102 I. C. 547; 24 Cr. L. J. 579, 20 Cr. L. J. 24, 97 I. C.
 665; 28 Bom. L. R. 674; 1926 Bom. 517; 27 Cr. L. J. 1145. *Contra.*
 99 I. C. 594; 1927 Sind 112; 28 Cr. L. J. 162

—a village Magistrate is not a Police Officer and so a con-
 fession made to him is not inadmissible. 7 M. 287; 1 Weir 735, 17
 B. 485. *Contra*, 26 M 38.

—a Police-Patel is a Police-officer within the meaning of ss.
 25 and 26 Evi. Act. 17 B. 485, *contra*. 28 Cr. L. J. 471; 1927 Nag.
 222; 101 I. C. 599

—a police Patel is within section 25, 26 C. 569; 3 C. W. N.
 393, but a police patel in Berar does not come within the term
 "police officers" 23 N. L. R. 23; 101 I. C. 599; 28 C. L. J. 471.

—Abkari officers are not "Police officers" within s. 25, 82 I.
 C. 151; 1925 S 70 *contra*. 28 Bom. L. R. 1116; 1927 Bom. 4; 99
 I. C. 330; 51 B. 78; 28 Cr. L. J. 122 F. B., 28 Bom. L. R. 174
overruled A Kotwar in the Central Provinces is not a "Police-
 officer" 1924 Nag. 29; 25 Cr. L. J. 147; 76 I. C. 291.

—a confession made to an Excise peon is inadmissible in
 evidence 117 I. C. 331; 1929 Bom. 70; 31 Bom L. R. 49; 30 Cr.
 L. J. 783.

—a village headman in Burma is not a "Police-officer" 81 I.
 C. 540; 3 Bur. L. J. 11.

—confession to a village-Munsiff in the Madras Presidency
 is inadmissible. 2 M. 5; 2 Weir 123.

—so also to a village headman or gang appointed under the
 Burma Rural Police Act. 1 Burma 479, but not so when it is made
 to a village chowkidar. 2 C. W. N. 71, *Contra* 2 C. W. N. 637.

—a chowkidar is not a Police officer within the meaning of
 s. 59 Cr. P. C. 27 C. 366; 4 C. W. N. 252.

—the custody of the jailor in a Native State is not the custody
 of the Police officer. 20 B. 795, 2 C. W. N. 71 *Fol.*

—the words "Police-officer" and "Magistrate" in s. 26 Evi.
 Act include those of Native States. 12 A. 595 (1820) W. N. 199,
 22 B. 235, 33 P. W. R. 1907; 46 P. L. R. 1908

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—statement made by accused to police in ignorance of complaint
 filed against him is admissible under ss. 25 and 26 of the Evi. Act.

(5) Confession to Police officer. S. 25 Evi Act—*Contd.*

It is also admissible as statement under s. 18 Evi. Act 9 Pat. L. T. 449: 1928 Pat 473: 111 I C. 72:

—the general rule in s. 25 Evi. Act is further subject to that which admits statements leading to discovery whether they amount to confessions or not. 41 C 601

—confession made to a Police giving information which leads to the discovery of fact is admissible. 6 A 509: (1884) W N 229, 24 W R 36, 14 B 261 F B, 10 B. 525, 2 L. B. R. 168, 31 A. 502.

—but the fact discovered in consequence of the confession must be relevant to the case 9 Pat. L T 377: 1928 Pat. 21: 9 A. I. Cr. R 118

—an accused signing the recovery list made in a search under the Excise Act cannot be relied on as proving that the accused was in possession of the house If it be evidence it would be an incriminating statement to a police officer and as such could not be admissible in evidence 100 I C 707. 28 Panj L. R 119: 8 Lah. 326: 1929 Lah 343

—an incriminating statement made to a witness and subsequently repeated before him and the police officer is undoubtedly admissible. 1923 Lah. 389

—any statement made to the Police to the effect that an article produced by suspected men really belonged to the deceased would amount not to a confession but to an admission. 5 Lah. L. J 128.

—under s. 25 Evi Act, a confession made to a police officer, whether he be officer investigating the case or not, is inadmissible in evidence except so far as provided by s. 27. 1 C. L. R. 21, 26 C. 569, 6 C 530 *Dist*

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—a statement of co-accused while in the custody of the police being an admission of a criminating circumstance cannot be admitted in evidence. 19 B. 363.

—confession made by an accused person while temporarily separated from the Police lock up is not admissible in evidence. 108 I. C. 398: 1923 Lah. 282: 10 Lah. L. J. 174: 29 Cr. L J. 386.

—the confession to the police may be used for the purpose of arriving at a conclusion as to whether a subsequent judicial confession should be believed or not, 75 I. C. 693: 1923 Leb. 315: 25 Cr. L. J. 5.

—though a confession made to a Police-officer may not be proved as against an accused, it may be proved for other purposes. 2 B. 61, 9 B. 131, 25 B. 168, 19 B. 668.

(6) Confession while under Police custody s. 26 Evl. Act

—as soon as an accused or suspected person comes into the hand of a "Police officer," he is, in the absence of clear and unmistakable evidence to the contrary, no longer at liberty and is therefore in custody within s. 26, 71 I. C. 429 : 1924 Nag. 173 : 25 Cr. L. J. 381.

—where an accused was sent to hospital from lock-up for treatment and the Police was in the veranda while in the room the accused confessed his guilt, the confession was inadmissible as he was in custody while in hospital. 42 B. 1

—confession to Magistrate while in Police custody is not admissible 91 I. C. 806 : 27 Cr. L. J. 134 : 1925 Lah. 557

—an admission not being a confession of guilt, made by an accused person to a police officer before arrest, is admissible, 6 C. 530 : 7 C. L. R. 45.

—confession was held unworthy of credit for amongst others the reason being that the confession appeared to have been made after the accused had been in police custody for sometime, 15 C. W. N. 593, 11 C. L. J. 273.

—statement made by an accused while in Police custody to a friend, during the temporary absence of the police is not admissible. 20 B. 165.

—confession made by an accused person while temporarily separated from the Police custody is not admissible, 108 I. C. 398 : 1928 Lah. 282 : 10 Lab. L. J. 174 : 29 Cr. L. J. 386.

—confession made to a person asked by the police officer to take down the confession, the police officer being in such proximity as to make his presence likely to affect the mind of the confessing person, is in substance a confession made to a police officer. 97 I. C. 44 : 1926 All. 737 : 49 A. 57 : 27 Cr. L. J. 1068

—the evidence of a Police who overheard a prisoner's statement made in another room, and in ignorance of the Police man's vicinity and uninfluenced by it, is not inadmissible. 7 W. R. 56.

—a confession to a Magistrate on leave in the presence of a Police officer who had arrested the accused is not admissible in evidence. 1929 All. 855 : 30 Cr. L. J. 867 : 118 I. C. 46

—a Judge d' instruction in French India is a "Magistrate" within s. 26 and a statement made by an accused in Police custody to such person is admissible in evidence. 52 M. 529 : 1929 Mad. 487 : 1929 M. W. N. 383 : 56 M. L. J. 628.

(7) Confession to person in authority.

—there is no definition of a "person in authority." The expression has been construed in England and the test is, had the person authority to interfere in the matter? The accused's wrong impression will not suffice. 50 C. 127 : 74 I. C. 264.

—a confession made to a person in authority induced by false hope or fear is not voluntary and is inadmissible in Evidence. 89 I. C. 961 : 4 Pat. 616 : 26 Cr. L. J. 1441 : 1925 Pat. 772.

(7) Confession to person in authority—*contd*

—a village panchayat who actively assists the police officer in the investigation of a crime is a "person in authority." 8 Pat. 289: 30 Cr. L. J. 675: 1929 Pat. 275: 116 I. C. 770: 10 Pat. L. T. 549: 1929 Cr. C. 62.

—confession to a village Panchayat who is a person in authority is, within the meaning of s. 24 Evi. Act inadmissible. 9 C. W. N. 474: 2 Cr. L. J. 255, 11 C. W. N. 901: 6 Cr. L. J. 154.

—collecting panchayat and assistant panchayat constitute "persons in authority." 50 O. 127, 74 I. C. 264, 1923 Cal. 458.

—a confession made before the Panchayat who did not give any inducement but only told the accused to speak the truth is admissible. 11 C. W. N. 934 6 C. L. J. 154.

—a president of a Panchayat is a person in authority 23 O. L. J. 477 21 C. W. N. 512 33 I. C. 82, so also a Lamhardar. 4 Lab. L. J. 235

—a Mukhia of a village is a person in authority 97 I. C. 44, 1926 All. 737 6 Cr. R. 211 49 A. 57, 24 A. L. J. 958.

—medical officer was not a person in authority within the meaning of s. 24 Evi. Act, 8 Bom. L. R. 507

—the expression "person in authority" includes Polica Patal (in Bombay) who arrests one of the persons accused of the offence. 40 B. 220, also the prosecutor. 26 C. W. N. 54

—Zeminder of the village who is also a Magistrate is a person in authority. 1927 Pat. 257: 101 I. C. 881: 28 Cr. L. J. 497: 8 Pat. L. T. 566.

—a confession legally taken by the Magistrate cannot be ruled out of court, simply because the accused was produced before the Magistrate with sole object of having his confession recorded by him. 24 P. W. R. 1909 Cr

—confession made to *panchayatdars* is admissible as they are not persons in authority. 45 M. L. J. 845: 18 L. W. 586: 76 I. C. 829: 1924 Mad. 230.

—confession made before the Administrator in Portuguese territory is excluded under s. 26 Evi. Act. 25 Bom. L. R. 706: 1924 Bom. 480.

—statements made by the accused to the Sub-Deputy Magistrate, deputed to make local inquiry, are inadmissible. 8 C. W. N. 22, 2 C. W. N. 702, 9 M. 224, 9 C. L. J. 55, Dist.

—an *Inamkhor* holds semi-official position and is not a person in authority under the Evi. Act. 114 I. C. 719: 30 Cr. L. J. 375: 1929 Cr. C. 102: 1929 Lab. 558.

(8) Confession leading to discovery of fact, S. 27 Evi. Act.

—in construing this sec. the word "confession" does not necessarily mean a complete admission of guilt but means and includes any incriminating statement. 1929 Lab. 338: 115 I. C. 1: 30 Cr. L. J. 385.

—the word "distinctly" in s. 27 is used in some sense other than the word "directly", 1929 Lab. 338: 115 I. C. 1: 30 Cr. L. J. 385.

(8) Confession leading to discovery of fact, s. 27 Evi. Act—contd.

—the word "fact" as used in s. 3 includes not only the physical fact but also the Psychological fact or mental condition of which any person is conscious, the word is used in the section in the former sense. 1929 Lab. 344: 30 Punj L. R. 197: 30 Cr. L. J. 414: 115 I. C. 6: 11 Lab L. J. 159: 10 Lab. 283 F. B.

—the word "information" which is distinct from the word "statement" connotes a statement or other means employed for importing knowledge possessed by one person to another and the knowledge so derived by other person. 1929 Lab. 338: 115 I. C. 1: 30 Cr. L. J. 385.

—such portion of the confession made to the investigating officer as leads to the discovery of any fact are admissible under s. 27 of the Evi. Act. 93, I. C. 894. 5 Pat. 63; 1926 Pat. 232: 7 Pat. L. T. 306

—the whole of the statement which leads to the discovery is admissible and sentence should not be so cut up as to reduce the statement only to the actual words which the accused may use to express the fact that he had hidden the property. The confession that the accused had in his possession certain stolen property is admissible in evidence even though he himself produced this property and it makes no difference whether he himself digs out the property or whether on the information given by him some one else digs up the ground and produces the property. 93 I. C. 42: 1926 Mad. 638: 27 Cr. L. J. 394. 50 M. 274.

—when some fact is discovered by information from several persons charged with an offence it should not be treated as discovered from the information of them all but from the first informant and it cannot be used as evidence against the subsequent informants. 101 I. C. 488: 28 Punj. L. R. 187: 28 Cr. L. J. 456: 1927 Lab. 789

—joint discoveries are not admissible at all against any of the accused unless it can be proved who first made the discovery. 1929 Lab. 665: 30 Punj L. R. 297. 1929 Cr. C. 214: 30 Cr. L. J. 639. 116 I. C. 619

—once property has been discovered in consequence of information received from respected person it cannot be re-discovered in consequence of information received from another suspected person. 9 P. L. R. 1922, 64 I. C. 502.

—the general rule in s. 25 Evi. Act. is further subject to that which admits statements leading to discovery whether they amount to confession or not. 41 C. 601.

—under s. 27 the truth of the confession is guaranteed by the discovery of facts in consequence of the information given, so risks under ss. 24, 25 and 26 disappear. 1928 Lab. 476.

—a confession made to a Police giving information which leads to the discovery of fact is admissible 6 A. 509: (1884) W. N. 229, 24 W. R. 36, 14 B. 260 F. B., 10 B. 595, 2 L. B. R. 168, 31

(B) Confession leading to discovery of fact: s. 27 Evi. Act—*confd.*

A. 592, 6 Pat. 747; 106 I. C. 698; 1928 Pat. 162; 29 Cr. L. J. 106

—It is not all statements connected with the discovery of property that are admissible, but those only which lead immediately to the discovery of property and so far. 11 B. H. C. 242 6A. 509, F. B. 14 B. 260 F. B., 3 B. 12, 12 M. 153, 6 C. 530, 10 B. 595, (1883) 3 W. N. 126, P. R. 30 of 1895 and it must be a fact relevant to the case in which the evidence is sought to be given. 105 I. C. 683 6 Pat. 611 28 Cr. L. J. 971, 9 Pat. L. T. 449 1928 Pat. 22, 9 A. 1. Cr. R. 118 *infra*, 1929 Lah. 344; 115 I. C. 6; 10 Lah. 283; 30 Cr. L. J. 414; 30 Punj. L. R. 197, F. B.

—admissibility of first information by accused admitting guilt and leading to discovery. 49 C. 167; 1923 Cal. 342.

—the confession must be made by a person accused of offence. Where the husband assaulted his wife who died as a result of it and the former went to the police station and reported the matter in consequence of which the police found out the corpse, the statement to the police was not admissible under this sec. as the husband was not at the time making the statement as a "person accused of an offence" 6 Pat. L. T. 533; 111 I. C. 118; 1923 Pat. 491 7 Pat. 411; 29 Cr. L. J. 790.

—statements to the Police-officers pointing out the places where the offence was committed by others or where he concealed himself and the houses to which he went for assistance, whether regarded as information leading to discovery or as statement made by him as part of his defence, are admissible in evidence as admissions. 41 C. 601.

—statements by the accused as to what, according to his case, had actually happened, exculpating himself and put forward by way of defence are admissible notwithstanding that by other evidence it may be shown that such statements are inconsistent with truth. 41 C. 601.

—a useful test as to the admissibility of statements made to the Police is to ascertain the purpose to which they are put, by the prosecution. If the prosecution relies on the statements of the accused as being true then they may, and probably in many cases will, be found to amount to confessions. If on the other hand, the statements of the accused are relied on not because of their truth but because of their falsity, they are admissible. They are in such cases brought forward to show what the defence of the accused is, and that, as the defence is untruth, this is a circumstance tending to prove the guilt of the accused. 41 C. 601.

—such statements are also inadmissible when the fact discovered was already known to Police-officer. 11 C. 635, 1929 Cr. C. 678; 1929 Sind. 250, 1929 Cr. C. 673; 1929 Nag. 350, 12 M. 153.

—where the article is found not in consequence of the information given by the accused but by his own act e.g. his going with the Police and pointing out the spot, the confession is admissible, 6 A.

(B) Confession leading to discovery of fact, s. 27 Evi. Act—*contd.*

599 : 4 A. W. N. 229 F. B., 10 Lah. L. J. 531 : 112 I. C. 55 : 29 Cr. L. J. 967.

—where the statement of the accused is necessary preliminary to the fact thereby discovered, it is admissible under s. 27 Evi. Act, the question whether the statement is sufficient to enable the Police to make the discovery by themselves, or is only of such nature as to require further assistance of the accused to enable them to discover the fact, is immaterial. 25 C. 413, 2 C. W. N. 257, 11 C. 635 *Ref.*, 14 B. 268 *fol.*, 4 A. 198 *Dis.*

—where a person was murdered and his body was discovered in consequence of information received from the accused the statement of the accused to the police that he with his father and brother buried the body is admissible in evidence. 95 I. C. 603 : 27 Cr. L. J. 827 : 8 Lah. L. J. 519, 25 C. 413 *fol.*

—a statement by the accused to a police officer amounting to a confession is not admissible in evidence, but it is admissible under s. 27 Evi. Act, if a fact is discovered as discovered in consequence of the information. 44 C. L. J. 233 : 1927 Cal 17 : 54 C. 237 : 99 I. C. 227 : 28 Cr. L. J. 99.

—where the accused voluntarily went to the Police officers and made a statement that he had committed the murder and that the instrument of murder was in a place named, and he was subsequently arrested, held that the statement was a confession and was not admissible, but evidence of Police officer however was admissible to prove the conduct and condition of the murderer at the time when the statement was made. 10 C. L. J. 13 : 10 Cr. L. J. 193 : 2 Ind. C. 951.

—so much of the information, even if it amounted to a confession, made to a Police officer, may be proved, as related to discovery of the articles stolen. The conduct or acts of the accused were not dealt with by s. 27 and relevant under s. 8 Evi. Act. S. 27 of the Evi. Act was an exception to the preceding sections and its object was to provide for the admissions of evidence, which, but for that sec. could not be admitted. 6 A. L. J. 839 Cr. F. B., 31 A. 592, 1924 Lah. 434, 69 I. C. 377. But see 14 B. 260., 25 C. 413 : 2 C. W. N. 257, where it was held that s. 8 Evi. Act does not render admissible in evidence any statement which ss 25 and 26 exclude.

—there are two limitations in order to prove the information against the accused. (1) The information must be such as has caused the discovery of the fact. (2) The information must relate "distinctly" to the fact discovered. Thus only that portion of the information is provable which was the immediate or proximate cause of the discovery of the fact. 1929 Lah. 344 : 30 Punj. L. R. 197 : 30 Cr. L. J. 414 : 115 I. C. 6 : 11 Lah. L. J. 159 : 10 Lah. 283 F. B., (9 Lah. 626 : 1928 Lah. 308 : 111 I. C. 561) *overruled*. (1926 Mad. 638, 1928 Pat. 162) *Dissented from*. 12 Mad. 153 *Expl.*

—the statement leading to discovery must be proved in the precise terms in which it was given. 111 I. C. 561 : 1928 Lah. 308 : 29

(8) Confession leading to discovery of fact, s. 27 Evi. Act—*confd*

Cr. L. J. 881. 9 Lab. 626, 1926 Mad. 633 F B, *Rel* (15 P. W. R. 1913 Cr., 11 P. R. 1915 Cr., 9 P. W. R. 1918 Cr.) *Doubted*. 1926 Lab. 138 *Dist*. 1926 Bom. 513, 1928 Pat. 162 *Approved*

—s. 162 Cr. P. C. overrides s. 27 Evi. Act 1927 Nag. 203. 28 Cr. L. J. 340. 100 I. C. 220

9. Confession of co-accused, S. 30 Evi. Act.

—this sec. does not refer to statements made at the trial but to the statements made before and proved at the trial, 1929 Mad 285 118 I. C. 512 1929 M. W. N. 371; 30 Cr. L. J. 932; M. 38 302 *Dis from*, 45 A. 323, 4 C 48 F B *Approved*

—a confession of co-accused made in the absence of the other is of no weight as against the latter, such confession as well as the statement of approvers are regarded as tainted from their position, 10 C 970, 6 Bom. L. R. 481.

—the confession not made in the presence of a Magistrate, is not admissible in evidence unless the fact discovered is one which of its own force, independently of the confession, would be admissible in evidence, 3 Mad. H. C. 318-2 Weir 735

—s. 30 applies to confessions made to the residents of the same village as the accused, 4 Pat. L. T. 505.

—confession recorded in the manner provided by Cr. P. C. even though made to M. outside Br India, if proved against the maker of it, may be taken into consideration against co-accused, 69 Ind. C. 257 23 Cr. L. J. 673.

—in the case of several accused persons an entry in the account book of one that he paid rents on behalf of another, is not evidence against that other, 45 M. L. J. 728; 33 M. L. T. 182.

—if *prima facie* evidence of the existence of a conspiracy is given and accepted, the evidence of statement made by one conspirator is admissible against all, 20 L. W. 202; 81 I. C. 817; 1924 Mad. 805.

—a confession of a co-accused is corroborative evidence of another co-accused's confession, if the former supports the latter in all its material parts, 24 P. W. R. 1909.

—a retracted confession of co-accused is of no practical value N. 670, 28 C. 689, 18 Cr. 28 Cr. L. J. 854, 101 I. C. Cr. L. J. 497, but if that

confession is unrebutted it is admissible as very strong piece of evidence, 114 I. C. 771; 30 Cr. L. J. 360; 1929 Oudh 167.

—a retracted confession of one accused can be taken into account against his co-accused under s. 30 Evi. Act '7 Burma 333; 2. P. L. J. 80; 18 Cr. L. J. 445.

—a retracted confession should practically carry no weight against the co-accused because it is not made on oath, it is not tested by cross-examination and its truth is denied by the maker himself who has lied on one or other of the occasions and a very fullest corroboration would be necessary in such a case for more

9. Confession of co-accused. S. 30 Evi. Act—*contd.*

than would be demanded for sworn testimony of an accomplice on oath 40 C. L. J. 551 : 1925 Cal. 406

—the confession of co-accused is inadmissible without corroboration, 9 A. 453, 4 C. 483 F. B., 28 C. 689; 19 W. R. Cr. 16, 10 B. 231, 2 C. W. N. 749, 20 Cr. L. J. 497, 15 B. 66, 22 A. 445, 81 I. C. 817 : 20 L. W. 202 25 Cr. L. J. 1041, 95 I. C. 938 : 27 Cr. L. J. 858 : 1926 All. 603, the question of what corroborative evidence is sufficient must depend on the circumstances of each particular case, 1929 Mad. 498, 119 I. C. 474 : 1929 M. W. N. 272 : 30 Cr. L. J. 1071; corroboration must be in material particulars. 1929 Lab. 338 : 30 Cr. L. J. 385 : 115 I. C. 1.

—a conviction based on the confession of a co-accused alone would be bad in law. 38 C. 559, 1927 Pat. 257 : 101 I. C. 831 : 8 Pat. L. T. 566 : 28 Cr. L. J. 497.

—such confession must amount to a distinct confession of the offence charged and not self-exculpatory. 6 B. 288, 6 C. 279, 7 C. 65, 10 C. 970, 7 A. 647.

—to make the confession admissible against co-accused it is not necessary that confessing prisoner should implicate himself as fully as his co-accused. All that is necessary is that the confession shall substantially implicate its maker in regard to the crime with which he and his co-accused are charged. 4 Pat. L. T. 505, 72 Ind. C. 497 : 24 Cr. L. J. 385, 1924 All. 511, L. R. 5 A. 101 Cr.

—but the principle underlying s. 30 Evi. Act is that unless the parties self to on it, 698, 1925 Ind. 400, 1925 Cr. C. 613.

—a confession is not inadmissible against a co-accused simply because it is not a complete and detailed confession up to the hilt. 84 Ind. C. 548 : 1924 A. 511.

—s. 30 of the Evi. Act is not limited to cases where the confessing accused directly implicates another accused but extends to cases where the confession indirectly affects the latter. 50 B. 693 : 28 Bom. L. R. 1013 : 1925 B. 513 : 27 Cr. L. J. 1140 : 97 I. C. 660.

—it is not necessary that there should be an admission of actual guilt. The admission may establish constructive guilt, 4 Pat. L. T. 505.

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—confession to be admissible against co-accused must sub-
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9. Confession of co-accused. S. 30 Evi. Act—*contd.*

C. W. N. 731 : 109 I. C. 351 : 1929 Cal. 416 : 47 C. L. J. 526 : 29 Cr. L. J. 527, 2 A. 444 *Rel. on.*

—where three persons were jointly tried and during the trial an information was lodged by one of them with the police which was an admission that all the accused were present at the occurrence, the information was not a confession under a. 25 Evi. Act, 37 C. 467.

—under Ss 27 and 30 of the Evi. Act a confession made by one accused can be taken into consideration against another accused when such confession is the immediate cause of discovery of some fact relevant as against such other accused 31 M. 127.

—the Legislature very guardedly says that the confession of a co-accused may be taken into consideration 24 W. R. Cr. 42; it does not mean that the confession is to have the force of sworn evidence 22 A. 445.

—the confession of one prisoner is evidence against another prisoner tried jointly with him for the same offence. They must be legally tried jointly as well as tried jointly in facts 22 C. 50, 1924 Nag. 27 : 23 Cr. L. J. 13 : 75 I. C. 701.

—the expression "same offence" means the identical offence and not an offence of the same kind. 32 C. W. N. 1004 : 113 I. C. 359 : 3 Cr. L. J. 475 : 1929 Cal. 14.

—a Session case is to be distinguished from a warrant case for the purpose of admissibility of the confession of a co-accused jointly tried 111 I. C. 387 : 29 Cr. L. J. 835 : 1928 Lah. 880, 15 P. R. 1911 Cr. Dist. 6 Lah. 176 *Rel. on.*

... accused person implicating his co-accused
... any of
... at the
... Cr. L.

—if the court does not convict an accused person on his plea of guilty his trial does not terminate with his plea and therefore a confession by him may be taken into consideration as against any other person jointly tried with him. 93 I. C. 241 : 27 Cr. L. J. 449 : 1926 All. 318 : 24 A. L. J. 318.

—confession of co-accused implicating himself and two others in a case of dacoity is inadmissible against the two others, provision of sec. 30 Evi. Act not being applicable to a case under s. 110. 22 C. W. N. 408.

—the expression "may take into consideration" shows the necessity of there being other evidence on record to which this statement can lend assurance. 109 I. C. 801 : 29 Cr. L. J. 609 : 1928 Nag. 213.

—a. 30 of the Evi. Act does not say that the confession referred to therein is relevant but only says that the court may take it into consideration against the co-accused. 65 I. C. 561 : 1922 Nag. 146.

9. Confession of co-accused. S 30 Evi. Act—*contd.*

—a retracted confession by an accused not fully implicating himself is not admissible against the co-accused. 4 Lab. L. J. 41: 68 I. C. 401.

—a statement by an accused can only be used against a co-accused if the provisions of s 30 are applicable. 20 A. L. J. 178: 65 I. C. 849

—a statement made under a. 364 Cr. P. C by a thief in his own defence is not admissible against another person charged as receiver The expression "proving a confession" is inadmissible to the questions and answers under s 364 Cr. P. C, 45 A. 323: 1923 A. 322.

10. Retracted Confession.

—a retracted confession, proved to be voluntarily made can be acted upon along with other evidence. 19 B. 728.

—a retracted confession should carry practically no weight as against a person other than its maker 26 C. W. N. 1010: 71 I. C. 497: 1923 Cal 217: 101 I. C. 881 28 Cr. L. J. 497: 8 Pat. L. T. 566.

—as a general rule a retracted confession cannot be used against the co-accused it is also not safe to convict the maker of such confession without corroboration in material particulars. 28 Punj. L. R. 583, 28 Cr. L. J. 854: 104 C. 630: 1927 Lsh. 765, 9 A. I. Cr. R. 56.

—where a confession is retracted both before the committing Magistrate and at the Sessions trial it cannot be used unless the court is otherwise satisfied of its truth and voluntary character. 45 M. L. J. 613. 1923 M. W. N. 697: 18 L. W. 607.

—even a retracted confession is admissible in evidence, but the jury must be allowed to decide what value should be attached to it. 49 C. 573. 26 C. W. N. 680: 35 C. L. J. 279: 69 I. C. 145

—a retracted confession may be impugned on the ground that it was not made voluntarily or was not true. 75 Ind. C. 152, 4 Cr. L. J. 904

—the mere fact that a confession is retracted will not raise an inference that it was obtained by improper inducement, threat or promise. Such a conclusion can be arrived at only from the surrounding circumstances on the record and not upon surmise or conjecture 97 I. C. 647: 27 Cr. L. J. 982: 27 Punj. L. R. 387, 1925: Lab. 605. *Fol.*

—a confession retracted at an early opportunity must be very carefully scrutinised before it is accepted by the courts. 24 P. W. R. 1909, 3 Bom. L. R. 441, 9 Burma 23.

—if the confessions be retracted afterwards and there be no evidence to support it, the case must be decided upon its own circumstances. 20 A. 133, 23 B. 316, 29 A. 434: 4 A. L. J. 310. 16 P. R. 1903, 5 A. W. N. 221, 18 A. 78, 20 A. 133, 1 Burma 423, 75 I. C. 152: 24 Cr. L. J. 904.

—where the confession made before the Magistrate was retracted before Sessions Court, but there was independent evidence corroborating it in material particulars, the conviction of murder on

10. Retracted Confession—*confd.*

such evidence was held to be right 19 M. 482, 2 Weir 745, 11 B. L. R. 219.

—a retracted confession made to a Magistrate in jail with a police officer in the next room cannot be acted upon unless supported by very good corroboration. 11 C. L. J. 273, 5 Ind. C. 773, 13 C. P. 107.

—confessions are open to suspicion when they are afterwards retracted and allegations of ill treatment are made against police, 25 B. 169, 6 C. W. N. 380.

—it cannot be laid down as an absolute rule of law that a confession made by a person in custody is not to be accepted as evidence. 21 M. R. 621, 9 Burma. Cr. L. J. 562.

—the admissibility of such a confession is a matter of prudence rather than of law. 19 B. 728, 18 A. 78, 22 C. 77, 164, 3 Bom. L. R. 441.

—allegation against police when retracting a confession should be carefully inquired into and considered 8 Bom. H. C. R. 138, 25 B. 169, 19 B. 728.

is not 129. 27 W. N. 29 Pat. 212: 117 I. C. 43.

—depositions of witness read under s. 238 Cr. P. C. and retracted at the trial are not by themselves material corroboration of a retracted confession. 11 M. 123: 2 Weir 376.

—where a retracted confession was found to have been made under suspicious circumstances and the evidence was at variance with the confession in material respects, a conviction based on the confession should be set aside; 6 C. W. N. 380.

—a Sessions Judge is justified under s. 310 Cr. P. C. in passing sentence on the accused on an admission by him of previous convictions. 5 C. W. N. 670: 28 C. 680, 19 B. 129, 3 L. B. R. 208.

is not 129. 27 W. N. 29 Pat. 212: 117 I. C. 43.

—a retracted confession of co-accused is of no practical value without sufficient corroboration. 5 C. W. N. 670, 28 C. 689.

—a retracted confession of one accused can be taken into account against his co-accused under s. 30 Evl. Act. 7 Burma 333.

is not 129. 27 W. N. 29 Pat. 212: 117 I. C. 43.

—a retracted confession can be acted on without corroboration if the court thinks that it was voluntarily made, 81 I. C. 62.

10. Retracted Confession—contd.

or if on evidence there was no possible doubt as to the truth of the confession. 1929 M. W. N 791

—the fact of retraction is not in itself sufficient to make it appear that it was unlawfully induced but may be corroborative of the approver's statement. 113 I.C. 65 30 Cr. L. J. 49 : 11 Lab. L. J. 5.

—admissions are on similar footing to a retracted confession and it is difficult to base conviction on such an admission 102 I. C. 492 28 Punj. L. R. 313 : 1927 Lah. 549 : 28 Cr. L. J. 556.

(11) Uncorroborated confession

—there cannot be conviction on the uncorroborated confession of co-accused. 1 All. 664, 675, 1 M. 163 : 2 Weir 740, 9 A. 452, 4 C. 483 F. B., 28 C. 689, 19 W. R. Cr. 16, 10 B. 231, 2 C. W. N. 749, 20 Cr. L. J. 497, 15 B. 66, 22 A. 445.

—a prisoner may be convicted on his own uncorroborated confession. 6 W. R. 73.

—a voluntary and genuine confession is legal and sufficient proof of guilt, 7 W. R. 41, but it must not be relied upon too much. P. R. 31 of 1867, Cr. P. R. 3 of 1808 Cr.

—it cannot be laid down as an inflexible rule that a confession made by a prisoner cannot be accepted as evidence of his guilt without independent corroborative evidence. Circumstances of each case should be considered. 26 C. W. N. 1010, 71 I. C. 497.

—it is sufficient that there is such corroboration of the confession as to indicate that the accused had such knowledge of the circumstances of the offence as would suggest his taking part in it. 4 U. P. L. R. O. C. 50 : 1922 Oudh 202.

—the conviction of an accused based solely on the confession of another accused cannot stand, there must be independent evidence entirely outside. 8 Ind. C. 817 : 20 L. W. 20 : 25 Cr. L. J. 1041

—a retracted confession can be acted on without corroboration if the court think it was voluntary. 81 I. C. 62.

Conspiracy Sec. I. P. C. Ss, 120 A—121, Evl. Act s. 10.

CONTEMPT OF COURT (s. 480 Cr. P. C.)

—any conduct that tends to bring the authority of court into disrespect or which amounts to an insult offered to a Judge or the dignity of the Court even though it may be after the termination of a pending case, is a contempt of Court. There is no rule of law restricting the manner in which complaints of defamatory attacks may be brought to the notice of the High Court. The High Court has jurisdiction to deal with cases of contempt in a summary manner by fine or imprisonment or both. 97 I. C. 108 : 24 A. L. J. 849 : 1926 A. 623, 29 A. 108 Fd.

—where the appellant ill-treated a clerk entrusted with the duty of serving notice under Or. 21 R. 37. C. P. C. refused to accept the service and called him "damned swine" and caught him by the throat and dragged him and pushed him towards the door, he was guilty of contempt of Court as his action was calculated to

11. Contempt of court—contd.

obstruct or interfere with the due course of justice or the administration of law. 53 C. 401 : 43 C. L. J. 41 : 94 I. C. 532 : 1926 Cal. 701.

—assaulting, ill-treating or threatening a process-server is contempt of Court. 29 C. W. N. 766 : 41 C. L. J. 515 : 88 I. C. 725 : 1925 Cal. 945 : 26 Cr. L. J. 1205.

—the insult offered to an advocate after the termination of a case cannot be condemnation of the system of administration of justice but will be the subject of contempt proceedings. 108 : 1926 All. 6.

—offering obstruction to a receiver and an attempt to intercept and prevent the payment of rents to him amounts to contempt of court. 32 C. W. N. 525 : 1927 Cal. 548 : 101 I. C. 112.

—wilful disobedience to a judgment or order requiring a person to do any act other than the payment of money or abstaining from doing anything is a contempt of court which is punishable by attachment or committal. 32 C. W. N. 525 : 101 I. C. 112 : 1927 Cal. 548.

—where a court granted an injunction prohibiting a company to hold a meeting and some of the shareholders met at a private house and held a meeting and purported to transact some business and one of them who had never been served with the copy of the injunction order was prosecuted for contempt of Court, held that there was no such contempt. 52 C. 513.

—whether a petition has been heard in the chambers or in the court, the publication of an article purporting not only to be

—accusations against Chief Justice, limitation of newspaper criticism. 8 Pat. 323 : 117 I. C. 180 : 1929 Pat. 72 : 30 Cr. L. J. 741 F. B.

—where a newspaper article attacked a High Court Judge of having decided a case not according to justice but to please and carry favour with others, the article fell within the category of "scandalising a Court or a judge" and amounted to contempt of Court. Tendering an apology was not a sufficient reason to secure for the accused immunity from punishment. 6 Lab. 528 : 1926 Lab. 1 : 89 I. C. 833 : 26 Cr. L. J. 1409 F. B.

—accusation against jail authorities in newspaper article prejudicing fair trial.—apology. 26 A. L. J. 1307 : 113 I. C. 754 : 1929 All. 81 : 30 Cr. L. J. 217 F. B.

—(i) the author of an article who not only attributes the Judge's decisions to error but also as being due to improper motives and incompetence and calls for public inquiry into the matter is liable for contempt of Court. (ii) In contempt proceedings reason-

11. Contempt of Court—*contd.*

able interpretation should be placed on the article containing the contempt and there should be a clear case before conviction. (iii) The Lahore High Court has jurisdiction to deal summarily with cases of contempts of itself. 1927 Lah 610 : 28 Cr L. J. 727 : 9 Lah. L. J. 465 : 103 I C 775 : 29 Punj L R 294 F B

—writing and getting an article published in a newspaper about a pending case is a contempt as the writing is likely to prejudice the course of justice, 1928 All. 673 : 29 Cr L. J. 801 : 111 I. C. 305. F. B.

—it is not always a defence to a rule for contempt of Court that the newspaper, guilty of the offence, immediately afterwards published an apology to the Court. 72 I C. 73 : 25 Bom L. R. 107 : 24 Cr. L J 289.

—when an undertaking is given to a court by a litigant on the faith of which the Court sanctions a particular course of action or inaction, its breach is misconduct amounting to contempt. A person guilty of such contempt places himself in a perilous situation so as not to be heard by the court till he has purged his contempt. The rule denying privileges is limited to proceedings in which contempt occurs. A litigant in contempt has no standing in the court. 39 C. L. J. 217 : 82 I. C 292 : 1924 Cal. 953

—where the article as a whole would leave on the mind of an ordinary reader the clear impression that injustice had been deliberately done on political grounds to some of the accused who were apparently innocent, in other words it attributed judicial dishonesty to the Judges, such article constituted a contempt of Court. Any unfair criticism on Courts or Judges constitutes such an interference with the administration of justice as should be punished. 25 Bom. L. R. 15 : 1923 Bom. 8.

—when the High Court stayed a case and the vakil in the case sent a telegram to the Magistrate but still the Magistrate proceeded with the trial though there was no formal communication of the stay order, the Magistrate was guilty of the contempt if he wilfully disobeyed the order. 1923 M. W. N 919 : 45 M. L. J. 742.

—where the editor of a weekly newspaper published an article commenting on certain proceedings in the Court of a first class Magistrate attributing partiality to the Magistrate in favour of the prosecution and criticising the proceedings in his Court, in an unfair manner and suggesting that he acted under the instruction of the District Magistrate and not in his own

conscience
Magistrate
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by High Court. 46 B. 592 : 24 Bom. L. R. 16 : 65 I. C. 753 : 23 Cr. L. J. 177.

—the High Court is a Court of Record and has a general power of superintendence and control over inferior civil court subor-

11. Contempt of Court—*contd.*

dinate to it and so has the power to deal with contempt directed by a newspaper against an inferior civil court. This power is inherent one. 97 I. C. 103 : 1926 All 823 : 24 A. L. J. 849.

—the Lahore High Court as a Court of Record has jurisdiction to deal with contempt of Court summarily in respect of an article published in a newspaper accusing a Judge of the High Court of having decided it not according to justice but in order to please and carry favour with others. 6 Lsh 523 : 1926 Lah. 1 : 89 I. C. 833 : 26 C. L. J. 1409, F. B.

—the special jurisdiction inherent in the High Court to entertain proceedings for contempt of Court should not be exercised in ordinary cases when proceedings in the Magistrate's Court would be quite sufficient. 53 C. 401 : 43 C. L. J. 41 : 94 I. C. 532 : 1926 Cal. 701.

—the jurisdiction to punish for contempt of Court is inherent in the High Court as a Court of Record and without it its constitution as a Court of Record would be altogether useless. But the Court always exercises its power of punishing for contempt with great forbearance and acts with scrupulous care. It is ordinarily very chary in punishing people for contempt and when the occasion arises it deals with such question in the interest of the public. Assaulting, ill treating or threatening a process server is contempt of Court, 41 C. L. J. 515 : 29 C. W. N. 766 : 88 I. C. 725 : 1925 Cal. 945.

... contempt of Court is of the nature of a criminal offence, and guilty, Court can with great caution and not without ample materials. The report of receiver based on hearsay evidence should not be basis of conviction. 32 C. W. N. 1242 : 1929 Cal. 115 : 118 I. C. 565

For other cases, see, *Cr. P. C. s. 480, I. P. C. ss. 175, 178, 179, 180, 223.*

COPYRIGHT ACT (Act III of 1914.)

—a suit to recover damages for infringement of copy right does not lie to the Court within whose jurisdiction the plff, but not the deft. resides, 33 A 24.

—an acquittal will be set aside to revision in a case when the Court below has proceeded on wrong view of law. 51 M. 180 : 105 I. C. 669 : 28 Cr. L. J. 957 : 1927 M. W. N. 772.

—where the plff.'s work on religious observances was such a new arrangement of old matters as to be an original work and the defts. had not gone to independent sources for their materials but had pirated the plff.'s work they must be restrained by injunction. 13 B. 358.

—under the old law copyright would not be infringed by translation 19 B. 557, 14 B. 586.

Copyright Act—*contd.*

—“original” in sub-seo. (1) does not relate to ideas but to their expression. 83 I. C. 101: 1924 P. C. 75: 24 C. W. N. 613: 48 B 308 P. C.

—though copyright might not include translation, the author of a book who made a translation of it is entitled to copyright as it was an original work. 13 A. L. J. 636

—a book containing the selection of poems can be the subject matter of copyright, the true principle applicable to such cases being that one person is not at liberty to use or avail himself of the labour which another has been at for the purpose of producing his work, and so take away the result of the other's labour, or in other words his property. 17 C 951.

—plff. was found to have no copyright in the almanac. 95 P. L. R 1910.

—one cannot have copyright in the reports of the judgments of any court of law but he has copyright in the statements of facts of cases. 18 C. W. N. 1078.

—when a person does a literary work at the request of or for another with full knowledge that the latter will publish them as a matter of course, and the latter publishes the same, plff. cannot claim any copyright. 38 A. 484.

—the author of a book which has been registered under the Copyright Act is entitled to copyright in a translation of it as if it were an original work 30 I. C. 480: 16 Cr. L. J. 656: 13 A. L. J. 636.

—in an action by plff. for an injunction and damages on the ground that the deft's directory infringed the plff's copyright in his directory it was found that the deft's publication was a *verbatim* reprint of the substantial portion of the plff's directory, some inaccuracies being identical and there being some identity of information and language held that the deft's work involved an infringement of copyright. The plff in such a case is entitled to claim general damages and also compensation for conversion based on the sale by defts. 67 I. C. 983.

—the author of an English grammar the subject matter of which is arranged in a new way can acquire a copyright and when

—in case of pictures the question is whether the offending pictures are copies of substantial portions of the copyright pictures. 1928 Cal. 359: 33 C. W. N. 172: 39 Cr. L. J. 16: 112 I. C. 784.

—when the author of certain songs sold the right to publish, undertaking to revise some of the songs or to re-write some of them, the sale was complete and purchaser acquired an exclusive right to publish or refrain from publishing the songs and any one

Copyright Act—contd

publishing the songs without his consent infringed his legal right. 39 M. L. J 341: 1920 M. W. N 426: 12 L. W. 151: 59 I. C. 229

—selection of passages from a non-copyright work was not entitled to protection. Some mental labour, skill and judgment are needed to select passages for the use of school boys, but at the same time it must be remembered that by itself is not necessarily sufficient to constitute what one may call original work. 23 Bom. L. R. 1299, 17 C 951

—merely selecting passages and knitting them together does not constitute copyright. Raw materials or the original works are open to all, it is only use of another's labour and skill that constitutes infringement of copyright. 1924 P. C. 75: 83 I. C. 101: 28 C. W. N. 613: 48 B. 308 P. C.

—when no issue as to the existence of copyright is put by the defendant, irrebuttable presumption is that copyright of the work subsists. 39 C. L. J 134: 81 I. C. 754: 1921 Cal 595.

—in ordinary circumstances the court should get the opinion of experts who may be appointed commissioners to investigate and report on the matter to issue. 39 C. L. J 134: 81 I. C. 754: 1921 Cal 595.

—what is copyright-compilation with notes of passages from old author. 28 C. W. N. 613: 22 A. L. J 473: 1924 M. W. N. 309: 22 A. L. J. 473 P. C.

—the originality which is required relates to expression of thought. 1924 P. C. 75: 83 I. C. 101: 28 C. W. N. 613: 48 B. 308 P. C.

—the fact that the copyright in some of the illustrations in a book does not preclude him from publishing the book with the other illustrations as they are not the illustrations as such.

—it was not sufficient merely to give undertaking not to publish in future illustrations which he admits to be infringements. The defendant ought on the commencement of the suit to have offered to consent to an injunction, *abote case*

—the title to the copyright is complete before registration which is only a condition precedent to the right to sue. 17 C. 951.

—the copyright in a book published before 1847 is not under s. 11 of the Copyright Act, 1911. 39 M. L. J. 341: 1920 M. W. N. 426: 12 L. W. 151: 59 I. C. 229

—a suit for injunction to restrain the sale of a book published more than a year before suit is not barred. *abote case*.

—the District Courts have jurisdiction to maintain suit for damages. 6 C. 499.

Copyright Act—contd.

—the offence is complete as soon as the work which infringes the copyright is printed, 28 P. R. 1918 Cr.

—the word "original" does not require that the work must be the expression of original or inventive thought. Copyright Acts are not concerned with the origin of ideas, but with the expression of thought, and in the case of "literary work" with the expression of thought in print or writing. 28 C. W. N. 613 : 48 B. 308 : 2 Pat. L. R. 137. 1924 I. C. 75 P. C.

COST (General.)

—there is no inherent power to award costs of criminal cases. There is no statutory authority to grant costs in criminal cases generally and where the Cr. P. C. Code intends to confer the power of awarding costs it does so in terms. In cases not so provided for, the Court has no jurisdiction to grant costs. The High Court can not grant costs against a private party who unsuccessfully applied for revision against an acquittal order. 45 B. 913 : 1922 Mad 502 : 68 I. C. 615 : 23 Cr. L. J. 583. 1922 M. W. N. 579.

COUNSEL.

—it is uncontestable that it is not the duty of the defence counsel who has lost faith in the case, to support which he had been engaged, to approach the trial judge and to apprise him that in his opinion the accused has no defence to make. When it appeared from a memorandum prepared by the trial Judge that before the trial began the defence Counsel informed the Judge privately that he was satisfied that there was no defence to the charges which included one of murder and that accused was guilty would treat the accused leniently under the conduct of the defence
38 C. L. J. 411 : 28 C. W. N. 170 :
Cal. 257. F. B.

—it is better in a murder case not to take admissions from defence counsel. The more prudent course is to have every fact strictly proved on the record. 58 I. C. 457 : 21 Cr. L. J. 777 : 24 P. L. R. 128 (All).

—the rule as to exclusion of witness from the court until they have been examined does not apply to counsel appearing for parties to the case. There may be circumstances which may make it desirable for a counsel who has been cited as a witness in the case not to appear, but they do not render his appearance illegal. 44 M. 916 : 1921 M. W. N. 440 : 62 I. C. 828 : 22 Cr. L. J. 588.

—no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused. 31 C. W. N. 271 : 45 C. L. J. 441 : 8 Pat. L. T. 155 : 25 A. L. J. 117 : 29 Bom. L. R. 813 : 52 M. L. J. 585 : 100 I. C. 227 : 28 Cr. L. J. 239 : 1927 P. C. 44

CRIMINAL PROCEDURE CODE.

5. 1. Short title, commencement.

—the Code does not apply in Tributary Mehal of Keonjhar, 16 C. 667, the Civil Station at Rajkot, 10 B. 168, the territory of Mohurbhunja, 8 C. 985, the Hyderabad State Railway, 25 C. 20 P. C., the Noth Cachar Hills, 26 C. 874, the Chittagong Hill Tracts, 27 C. 654.

—but although the Code as such does not apply to the Native States many of those States have in fact adopted it, 12 M. 39.

—Criminal Procedure Code is applicable to prosecution under the Calcutta Municipal Act. 31 C. W. N. 503: 45 C. L. J. 469: 101 I C. 183: 28 C. L. J. 407: 1927 Cal. 509, (9 O. W. N. 18, 30 C. W. N. 598 43 C. L. J. 231) *Rel.*

—a preamble cannot be taken to have cut down the express provision of statute, 11 A. 262.

—by virtue of an order in Council of 1876, under certain circumstances the Bombay High Court is vested with the original Criminal jurisdiction of Muscat, so the exercise of which the provision of the Code would apply, but it has not Appellate or Revisional jurisdiction 24 B. 471.

—trial of offences committed on High seas are to be conducted under the Code, 16 C. 238, 21 C. 782, 7 B. H. C. R. Cr. 83, 8 B. H. C. R. Cr. 63 though the offence charged must be one under English law in some cases it was held that the I. P.

ry for

—marginal notes do not form a part of the section and sections are not to be construed with reference to such notes 23 C. 55, 25 C. 858: 2 C. W. N. 108.

—rules made under local laws are not local laws. 23 P. R. 1894.

—in determining what the Act means the subordinate courts cannot refer to the proceedings in the Legislative Council, 8 C. W. N. 578: 31 C. 628.

—in case of transfer of territories from British India to Native State the British Indian Court has jurisdiction to try the case or hear appeal, if the transfer is made before trial or hearing of appeal, 34 A. 118, 35 A. 578.

—"special law" in the sec. refers to statutory enactments and not to local family law. 37 M. L. J. 361.

—this Code does not apply to the Police in the City of Calcutta unless expressly provided, 31 C. 557.

S. 2 (Repeal of enactments) *This section has been repealed by the amending Act.*

—general Legislative enactments relating to procedure have no retrospective force. 2 B. 148. 2 C. 225, 25 C. 333, 20 M. 481. 2 A. 74.

—in the absence of express provision in the New Act the repeal of the old Act cannot affect the validity of any procedure in the trial of a case already commenced 3 Bom. L. R. 584.

—the repeal of a statute repealing another statute does not revive the repealed enactment. 2 C. W. N. 11. 25 C. 333.

S. 3. Reference to Cr. P. C. and other repealed enactments.

—the words "so far as may be practicable" refers to the repealed Act only to the extent of any necessary inconsistency with the provisions of another Act 12 M. 94 F. B.

—the Presidency Magistrate of Calcutta may lawfully take cognizance under s. 1 of the Act of a complaint in respect of a contract made in Calcutta the breach of which has been committed beyond the local jurisdiction of his court. 25 C. 637

S. 4. (Definitions).

—where a definition includes something it does not necessarily include other things not so included. 4 C. 392.

(c) *Charge*

—"charge" means a whole series of counts or heads of charges or various offences 9 S. L. R. 37: 30 I. C. 125.

(f) *Cognizable offence*

—power of arrest without warrant referred to in this clause is an unqualified power. 24 C. 691.

—the term "Police officer" does not mean any Police officer; the power of arrest may be limited to any particular class of Police officers. 27 C. 144.

(h) *Complaint.*

Sub-headings of notes.

(1) *What is a complaint.*

(2) *What is not a complaint*

(3) *Who is complainant and who can make a complaint.*

(4) *What is Complaint.*

—the definition is very wide; a petition impugning the correctness of a police report is a complaint. 10 C. W. N. 158; 2 C. L. J. 328, 33 C. 1, 4 C. W. N. 221 (note), 5 C. W. N. 106, 254, 14 C. 707. F. B., 18 Cr. L. J. 754 (Pat.), 111 I. C. 862; 1928 Pat. 585; 7 Pat. 561.

—the definition of "complaint" does not require that the action asked for should be under any particular section of the Code and does not exclude request for action under s. 107, provided the alleged facts amount to a substantive offence. 93 I. C. 69, 1926 All. 359; 27 Cr. L. J. 405.

S. 4 (h) what is complaint—*contd.*

—a complaint need not quote any section of the Code but must contain a statement of the facts constituting an offence and it is for the Magistrate to determine on those facts what offence has *primo-facie* been committed 26 Punj. L. R. 352; 1925 Lah. 631, 110. I. C. 108; 29 Cr. L. J. 652, 1928 Lah. 510

the police officer who was
the Magistrate for taking
82 I. C. 753 25 Cr. L. J.

—the mention of the name of the accused is not imperative. 7 Pat. 561; 1928 Pat. 585; 111 I. C. 862; 10 Pat. L. T. 14

—the report of an Excise Sub-Inspector falls within the definition of complaint under s. 4 (h), 54 C. 371 1927 Cal. 405; 100 I. C. 510; 28 Cr. L. J. 316; 1927 Cal. 405.

—an application by a complainant to have his witness summoned coupled with his oral allegations is a complaint 35 C. 141

—a petition of complaint by a President of an Union to a
must be examined on oath before

e made by any person aware
as it is otherwise provided. 13
536, 1 B. 175, 25 C. W. N. 357.

—the complaint merely sets the machinery of the court in motion, the Crown is really the prosecutor in all Criminal cases, 7 C. L. J. 375; 12 C. W. N. 750, 7 Cr. L. J. 342.

—the submission of records by an Assistant Magistrate trying a rent suit, to the Collector who was also the District Magistrate for starting a case under s. 193 I. P. C. against the plaintiff, 26 A. 514, communication by a Revenue Court to the District Magistrate to take steps with respect to a forged document, 30 P. R. 1095, 8

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tion of complaint once
5 C. W. N. 106, 254, 14 C. 707 F. B., petition presented to

to have his witness summoned
C. 141, 1 P. L. J. 592, proceedings
person to the nearest magistrate,
Q. 98, 7 A. 87 F. B., 32 B. 184,
3, 53 I. C. 610, complaint by a

prosecuting Inspector of offences under s. 124 A. I. P. C. 32 M.
3, application by a complainant to have his witnesses summoned
coupled with his oral allegations, 35 C. 141, a yadast sent by a
Revenue officer to a Magistrate charging a person with having
disobeyed a summons. 11 M. 443, amount to complaints.

—examination of complainant under s. 200 Cr. P. C. if can
be treated as part of the complaint. 64 I. C. 282; 1922 Mad. 353.

S. 4 (h) what is complaint—contd.

—petition of objection against a police report asking the M. to make an investigation and to summon the accused is a complaint. 3 P. L. J. 346

—report of the District Judge to the District Magistrate asking him to prosecute the transferee from an insolvent is a complaint. 18 A. L. J. 50.

—where the Judge's order was "I complain that R. filed two false and forged bonds in the Court of Small Causes etc." and he sent the paper to the District Magistrate for taking action it was a "complaint" within this cl. 12 A. L. J. 881. 26 I. C. 148.

—report of a trying Magistrate to the District Magistrate may be considered as a complaint. 81 Ind. C. 595 : 25 Cr. L. J. 947.

—a letter to District Magistrate conveying information of an offence may be treated as a complaint. 61 Ind. C. 971 : 25 Cr. L. J. 1147.

—"report of a police officer" means the report of Police officer in cases in which he is authorised by the Code to investigate. 84 Ind. C. 753. 25 Cr. L. J. 1361 otherwise, it is complaint. 34 M. 3, 23 C. W. N. 481, 6 S. L. R. 82.

—Cr. P. Code does not prohibit a Police officer from presenting a complaint to the M. in a case not cognisable by the Police. 82 Ind. C. 753. 25 Cr. L. J. 1361 and when the Police Officer investigates a non-cognisable case under the order of the Magistrate having power to try the case, his report is not a complaint. 11 A. L. J. 332.

—a report of the Police Officer purporting to be under s. 173. Cr. P. C. is a complaint. 40 C. 360, 26 B. 150, 43 C. 173, 17 C. W. N. 824, 38 C. 68, 14 C. 707, 32 M. 3 Ref 43 C. 1152 Dist.

—errors etc. in the complaint is cured by sec. 537 Cr. P. C., 32 M. 3.

—an insertion of wrong section does not make a complaint illegal. The essence of the complaint is the statement of facts relied upon as constituting the offence. 110 I. C. 108 : 1928 Lah. 510 : 29 Cr. L. J. 652 : 9 Lah. 678.

(2) What is not a Complaint.

—a complaint to the Police. 6 A. 96, 7 M. 563, 31 M. L. T. 264-68 I. C. 624, information to the Police officer, 22 B. 949 p. 956, 1904 A. W. N. 265, 30 C. 285, 910 F. B. petition under s. 110 or 145 Cr. P. C. 20 C. 729, 27 C. 662, 6 C. W. N. 163, 42 P. R. 1905, 20 A. W. N. 206, application under s. 488 Cr. P. C., 5 C. 536, 16 C. 781, 2 C. L. J. 421, 11 M. 199, 18 B. 468, 13 P. R. 1885, 29 P. R. 1905 Punj. Rec. 1885 P. 26, 111 I. C. 669 : 29 Cr. L. J. 909 : 30 Punj. L. R. 549 : 112 I. C. 218 : 10 Lah. 406 : 29 Cr. L. J. 1002 : 1929 Lah. 32, petition to Court of Wards, 30 C. 415, a charge of defamation added during examination under s. 200 Cr. P. C. 10 A. 39, petition to the Magistrate not intending to prosecute the accused, 6 C. W. N. 926, telegram to D. S. P. requesting search of a particular house, 22 B. 949, 956, or an order under s. 476, 32 M. 49 and a letter conveying a sanction of

(S) 4 (h) What is not a complaint—*contd.*

the Local Government under s. 196, 16 P. R. 1890, 8 P. R. 1908, : 7 Cr. L. J. 353, are not complaints, nor the report of a Police officer is a complaint 2 L. B. R. 146, but the report of the Prosecuting Inspector to the Magistrate under the authority of the Government is a complaint. 32 M. 3.

—If a prosecution under s. 186 I. P. C. their must be a complaint in writing of a public servant concerned or some other public servant to whom he is subordinate. Where a process server reported the occurrence on the back of the warrant of the civil court and the Subordinate Judge merely reported the matter to the police neither the report nor the police challan instituted a complaint. 110 I. C. 101, 1928 Lab. 827. 29 Cr. L. J. 645.

—a petition asking for an order on the Police to warn a person is not a complaint 15 C. W. N 1051

—the report of a person who was obstructed, merely stating what happened, without any express or implied requests to the Magistrate to take action is not a complaint 17 C. W. N 980, 36 A. 222, 12 C. W. N. 438, 26 M. 640

—lodging information at thana is not a complaint. 30 C. 285, 30 C. 910 : 8 C. W. N 17.

—petition to the Collector as a superior officer directed against one of his inferiors for redress of grievances is not a complaint. 30 C 415, 40 A. 641.

—an application under s. 107 Cr. P. C. is not a complaint. 81 Ind C. 973 (Oudh) : 25 Cr. L. J. 1149.

—the use of a house as a brothel is not an offence ; so a statement to a M. that a certain person has so used his house is not a complaint 6 S. L. R. 254.

—a Deputy Commissioner being an *ex-officio* Dt. Magistrate a petition to him is a complaint. 13 N. L. R. 14.

—an application to Deputy Commissioner is not a complaint. 75 I. C. 543 : 1924 Nag. 115.

—a petition sent by a husband to a Magistrate not with a view to his taking action but to recover the jewels alleged to have been taken away by his wife is not a complaint. 16 C. L. J. 466.

—a document in writing containing an allegation that a specific offence has been committed does not necessarily constitute complaint. The allegation must be with a view to action being taken against the so used under the Code. 119 I. C. 413 : 1929 Pat. 473 : 10 Pat L. T. 779 : 1929 Cr. C. 341 : 30 Cr. L. J. 1056.

—an application under s. 107 Cr. P. C. is not a complaint. 76 I. C. 25 : 1924 Lab. 630.

—an application to Court Inspector is not a complaint. 76 I. C. 189 : 1924 Lah. 258.

—a report made by a Circle Inspector to the superintendent of Police who made an endorsement thus "I submit the above report for favour of perusal and necessary action" is not a complaint s. 4. 96 I. C. 211 : 27 Cr. L. J. 899 : 1926 All. 566.

(3) Who is complainant and who can make a complaint.

—one who sets the machinery of the Court in motion is the complainant. 7 C. L. J. 375 : 12 C. W. N. 750.

—details of the offence need not be set out in the petition. 32 M. J., but it must contain a statement of facts constituting the offence, the mere mentioning of words of the sec. of the statute is a colourable compliance with the requirements of the law. 16 C. W. N. 1105, 25 C. W. N. 357.

—it is not necessary that the complainant should always be the party directly aggrieved by the commission of the offence. 18 C. W. N. 921 : 24 I. C. 954 : 41 C. 1013

—it is not necessary that the person making the complaint must have personal knowledge of the facts constituting the offence. 25 C. W. N. 357, 61 I. C. 339, 1 P. L. T. 531; 21 Cr. L. J. 346 : 7 S. L. R. 77, 18 C. W. N. 921

—a complaint need not be presented personally by the complainant, 30 Cr. L. J. 732 : 1929 Sind 132 : 117 I. C. 147, 17 C. W. N. 448 : 1925 Oudh 144 Ref.

—a complaint may be made by any person who knows about the commission of an offence and not necessarily by the person injured. 33 C. W. N. 576 : 119 I. C. 130 : 1929 Cal 839 : 1929 Cr. C. 357.

—if a general law is broken, any person has a right to complain whether he himself has suffered any particular injury or not. 41 C. 1013, 21 B. 536, 13 B. 600, 18 A. 465, 20 C. 481.

(1) *European British subject.*

—a person claiming the privilege of an European British subject must prove not only legitimate descent, but also the nationality of his father or grand-father as the case may be. 6 M. H. C. R. 7, mere birth in Europe does not make one an European British subject. 14 Ind. C. 197, 24 P. W. R. 1912 : 6 P. R. 1912 Cr.

—the Governor-General in Council can empower a Magistrate to try a European British subject. 14 B. L. R. 106, 22 W. R. Cr. 54, 9 M. 256, 4 C. 172.

—in every case the right as an European British subject must be explained to him. A claim to be tried as such may be waived. 7 N. L. R. 93 : 11 Ind. C. 620, 14 I. C. 197, 24 P. W. R. 1912.

—if the right is waived it cannot be claimed at any subsequent stage. 45 M. L. J. 800, 1924 M. W. N. 60, 1924 Mad. 373 : 76 I. C. 695.

—a woman born of European parents and marrying the subject of Native State does not cease to be a "European British Subject" by reason of such marriage or because of his domicile in the Native State. 53 B. 149 : 1929 Bom. 81 : 30 Cr. L. J. 772 : 31 Bom. L. R. 62 : 117 I. C. 321.

(2) *High Court*

—the original side of the High Court is not highest court of criminal appeal or revision, 32 O. 379 : 9 C. W. N. 321.

(3) Who is complainant and who can make a complaint.—contd.

—the High Court exercising original criminal jurisdiction is not a Court of Sessions within this Code. 51 C. 980; 29 C. W. N. 394; 84 I. C. 929; 1925 Cal. 384.

missioner of Bhagalpur." 8 Pat. L. T. 271; 28 Cr. L. J. 80; 6 Pat. 83; 99 I. C. 112; 1926 Pat. 449.

(k) inquiry.

—inquiry does not mean an inquiry into an offence only but extends to matters that are not offences, 112., proceedings under s. 145, and proceedings under Ch. XII, are inquiries within the meaning of s. 4 of the Code. 13 C. W. N. 420, 22 C. 898, 28 C. 709, 15 C. 608 F. B., 9 A. 52, 32 M. 220 F. B.

—"other than a trial" was adopted from 15 C. 638, F. B.

—what is trial, see 25 C. 863; 2 C. W. N. 465, 3 C. 754, 27 M. 510, 32 M. 220, 15 C. 608 F. B.

—an inquiry under the Workman's Breaches of Contract Act is an inquiry contemplated by the Code, 45 A. 700

—the definitions in cl. (k) and (l) are not exhaustive. 46 C. 854, 38 C. 68 and 43 C. 173 *Discussed*.

—a "register case" or a preliminary enquiry into an accusation of an offence triable exclusively by the Court of Sessions is an inquiry and not a trial. 32 M. 218

—the word "trial" used in the sec. is not defined in the Code. It means 'the examination of a case, civil or criminal, before a judge who has jurisdiction over it according to the law of the land' 37 M. 510.

—"trial" means the proceeding which commences when the case is called with Magistrate on the Bench and the accused on the dock and the representatives of prosecution and the defence are present for the hearing of the case. 25 C. 863.

—trial is judicial proceeding ending in conviction or acquittal. All other proceedings are enquiries and they end variously according to circumstance. 1929 Pat. 644; 1929 Cr. C. 372.

—when the Magistrate issues process against the accused but subsequently concludes that the offence is triable by the Sessions Judge and commits the accused, the trial does not begin before the accused appears before the S. J. and the proceedings before the Magistrate is an inquiry only. 1929 Pat. 644; 1929 Cr. C. 372.

—It does not refer to miscellaneous proceedings such as under s. 145, Cr. P. C., 3 C. 754, but a proceeding under s. 107 is a trial, 27 M. 510, 45 M. 511 F. B., it includes appeal under s. 497 Cr. P. C. 16 C. 121.

the framing of charge,
as when the accused is
41, 15 C. 608 F. B., 32 M.

(3) Who is complainant and who can make a complaint.—*contd.*(i). *Investigation*

—the definition is not exhaustive, 46 C. 854, (38 C. 68, 43 C. 173) *discussed*.

—taking out a warrant of arrest arresting accused, seizing books etc. form some part of investigation: 26 B. 533.

(m) *Judicial proceeding.*

Sub-heading of notes

(1) What are judicial proceedings

(2) What are not judicial proceedings

(1) What are judicial proceedings

—an inquiry held by a Magistrate before issuing an order under s. 144 Cr. P. C. 19 M. 18, an inquiry conducted by a Magistrate into the truth of an allegation against a subordinate official, 28 A. 89 (32 C. 367 *Dist.*), an inquiry under the Legal Practitioners Act, 6 M. 252, 32 M. L. J. 402, 9 A. L. J. 136, an inquiry under s. 8 Reformatory Act, 14 B. 381, an inquiry into the report of an *amin* to a *muosiff* complaining obstruction to attachment of moveables, 10 O. W. N. 55, an inquiry under Ch XIV of the Code, 29 M. 89, 16 M 421, an inquiry by the Collector under the Income Tax Act, hearing objections to assessment, 44 P. R. 1955, investigation conducted by a Subdivisional Magistrate on a complaint taken cognisance of by another Magistrate and sent to him for inquiry, and reports, 36 C. 72, an order granting or refusing sanction. 20 M. 383, 1. M. 232, 23 M. 210, is judicial proceeding

—mutatio proceeding is a judicial proceeding. 6 O. W. N. 953.

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25 C. 440.

—proceeding in execution of a decree is judicial proceeding, 37 C. 642 F.B (35 C. 133, 7 C. W. N. 427, 32 C. 367) *overruled*. 10 C. L. J. 450, 10 C. W. N. 55, 10 N. L. R. 177, 14 C. W. N. 799, 17 O. C. 309, 1 O. L. J. 568, 26 I. C. 1003, 27 I. C. 545, 45 B. 668, 43 I. C. 441 (Pat).

—proceedings of the M. deciding as to the fitness of sureties under Chapter VIII. 2 S. L. R. 11.

ver execution proceed.

a preliminary enquiry

37 C. 52.

re judicial proceedings.

CRIMINAL PROCEDURE CODE.

(1) What are judicial proceedings — *encl*

the w t h a c i e s , 111

—an appeal under s 100, 101, 102, 111, 112, 241, 242, 243, 244, 245, 246, 247, 248, 249, 250, 251, 252, 253, 254, 255, 256, 257, 258, 259, 260, 261, 262, 263, 264, 265, 266, 267, 268, 269, 270, 271, 272, 273, 274, 275, 276, 277, 278, 279, 280, 281, 282, 283, 284, 285, 286, 287, 288, 289, 290, 291, 292, 293, 294, 295, 296, 297, 298, 299, 300, 301, 302, 303, 304, 305, 306, 307, 308, 309, 310, 311, 312, 313, 314, 315, 316, 317, 318, 319, 320, 321, 322, 323, 324, 325, 326, 327, 328, 329, 330, 331, 332, 333, 334, 335, 336, 337, 338, 339, 340, 341, 342, 343, 344, 345, 346, 347, 348, 349, 350, 351, 352, 353, 354, 355, 356, 357, 358, 359, 360, 361, 362, 363, 364, 365, 366, 367, 368, 369, 370, 371, 372, 373, 374, 375, 376, 377, 378, 379, 380, 381, 382, 383, 384, 385, 386, 387, 388, 389, 390, 391, 392, 393, 394, 395, 396, 397, 398, 399, 400, 401, 402, 403, 404, 405, 406, 407, 408, 409, 410, 411, 412, 413, 414, 415, 416, 417, 418, 419, 420, 421, 422, 423, 424, 425, 426, 427, 428, 429, 430, 431, 432, 433, 434, 435, 436, 437, 438, 439, 440, 441, 442, 443, 444, 445, 446, 447, 448, 449, 450, 451, 452, 453, 454, 455, 456, 457, 458, 459, 460, 461, 462, 463, 464, 465, 466, 467, 468, 469, 470, 471, 472, 473, 474, 475, 476, 477, 478, 479, 480, 481, 482, 483, 484, 485, 486, 487, 488, 489, 490, 491, 492, 493, 494, 495, 496, 497, 498, 499, 500, 501, 502, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 524, 525, 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, 537, 538, 539, 540, 541, 542, 543, 544, 545, 546, 547, 548, 549, 550, 551, 552, 553, 554, 555, 556, 557, 558, 559, 560, 561, 562, 563, 564, 565, 566, 567, 568, 569, 570, 571, 572, 573, 574, 575, 576, 577, 578, 579, 580, 581, 582, 583, 584, 585, 586, 587, 588, 589, 590, 591, 592, 593, 594, 595, 596, 597, 598, 599, 600, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 612, 613, 614, 615, 616, 617, 618, 619, 620, 621, 622, 623, 624, 625, 626, 627, 628, 629, 630, 631, 632, 633, 634, 635, 636, 637, 638, 639, 640, 641, 642, 643, 644, 645, 646, 647, 648, 649, 650, 651, 652, 653, 654, 655, 656, 657, 658, 659, 660, 661, 662, 663, 664, 665, 666, 667, 668, 669, 670, 671, 672, 673, 674, 675, 676, 677, 678, 679, 680, 681, 682, 683, 684, 685, 686, 687, 688, 689, 690, 691, 692, 693, 694, 695, 696, 697, 698, 699, 700, 701, 702, 703, 704, 705, 706, 707, 708, 709, 710, 711, 712, 713, 714, 715, 716, 717, 718, 719, 720, 721, 722, 723, 724, 725, 726, 727, 728, 729, 730, 731, 732, 733, 734, 735, 736, 737, 738, 739, 740, 741, 742, 743, 744, 745, 746, 747, 748, 749, 750, 751, 752, 753, 754, 755, 756, 757, 758, 759, 760, 761, 762, 763, 764, 765, 766, 767, 768, 769, 770, 771, 772, 773, 774, 775, 776, 777, 778, 779, 780, 781, 782, 783, 784, 785, 786, 787, 788, 789, 790, 791, 792, 793, 794, 795, 796, 797, 798, 799, 800, 801, 802, 803, 804, 805, 806, 807, 808, 809, 810, 811, 812, 813, 814, 815, 816, 817, 818, 819, 820, 821, 822, 823, 824, 825, 826, 827, 828, 829, 830, 831, 832, 833, 834, 835, 836, 837, 838, 839, 840, 841, 842, 843, 844, 845, 846, 847, 848, 849, 850, 851, 852, 853, 854, 855, 856, 857, 858, 859, 860, 861, 862, 863, 864, 865, 866, 867, 868, 869, 870, 871, 872, 873, 874, 875, 876, 877, 878, 879, 880, 881, 882, 883, 884, 885, 886, 887, 888, 889, 890, 891, 892, 893, 894, 895, 896, 897, 898, 899, 900, 901, 902, 903, 904, 905, 906, 907, 908, 909, 910, 911, 912, 913, 914, 915, 916, 917, 918, 919, 920, 921, 922, 923, 924, 925, 926, 927, 928, 929, 930, 931, 932, 933, 934, 935, 936, 937, 938, 939, 940, 941, 942, 943, 944, 945, 946, 947, 948, 949, 950, 951, 952, 953, 954, 955, 956, 957, 958, 959, 960, 961, 962, 963, 964, 965, 966, 967, 968, 969, 970, 971, 972, 973, 974, 975, 976, 977, 978, 979, 980, 981, 982, 983, 984, 985, 986, 987, 988, 989, 990, 991, 992, 993, 994, 995, 996, 997, 998, 999, 1000.

P. W. R. 1911, 11 L. C. 618.

—ordinary civil appeal. 1 Pat. L. J. 22 A.

—an inquiry by a Registrar of the Presidency Court as to the service of summons. 18 C. W. R. 132.

—the trial of a suit after an *ex parte* decree passed thereon set aside is a continuation of the trial of the suit and is a judicial proceeding. 18 L. W. 134, 32 M. 49, 42 M. 422, 9 L. W. 215, 4 M. Diss.

(2) What are not judicial proceedings.

—proceeding under s 88, 6 A. 487, inquiry of Collector under the Land Acquisition Act. 30 C. 37, 27 C. 820, inquiry by a Sub-Registrar under the Registration Act. 10 C. W. R. 222, 2 L. J. 619, 11 C. L. J. 121, 22 B. 936, inquiry before granting sanction to prosecute under s. 197, 23 M. 223, departmental inquiry falling under s. 197 of Bombay Land Revenue Code (Act V of 1879) 22 B. 936, proceeding of a Magistrate purporting to be under s. 10, taken to appear, 29 M. 100, 3 C. 742, 33 A. 32, proceeding on a report submitted by a Nazir resisted in giving delivery of possession. 32 C. 367, (overruled by 37 C. 642, 6 B.) proceedings by a District Magistrate on reference by a telegraph as to the claim of a certain heir of a deceased employee. 6 A. 103, proceedings under the Income Tax Act II of 1886. 44 P. R. 1905, 8 Bom. L. R. 477, inquiry to trace the writer of an anonymous letter. 5 W. R. Cr. 72, inquiry by a District Magistrate upon the order of his superior calling for inquiry false. 33 C. 30; proceedings. See also

125 for cancellation, 37 C. 72, 9, 5 A. L. J. 565, 719, 724, 32 M. L. 161, 11 B. an information published, 1894 who should pay edings before a

Magistrate as to the conduct of a person in a judicial inquiry taken under s. 190 (b), by a District Magistrate the Deputy Magistrate

(n) *non-cognizable offence*

—an offence under s. 9 of Act 1 of 1878 (opium) is a non-cognizable offence and is one for which a police officer cannot arrest without warrant and he has no authority to investigate under s. 155 or to make search under s. 165, 24 C. 691, 27 C. 144.

—a Magistrate can take cognizance of a noncognisable offence on a report in writing made by a Police officer. 1927 Lah. 702 : 104 I. C. 437 : 28 Cr. L. J. 437, 821.

(o) *offence*

—failure to prepare and to retain counterfoils of rent-receipt as specified in s. 58 of the R. T. Act is an offence. 9 C. W. N. 816.

—fine imposed under s. 8 of the Village Chowkidari Act upon the collecting member of a Panchayat, is in respect of an offence, 23 C. 421.

—neglect to maintain wife or children is not an offence and an order under s. 488 does not amount to conviction, 7 W. R. 10, 9 B. 40, 16 M. 238, P. R. 1885, 5 B. H. C. R. Cr. 81.

—a mere breach of contract is not under Cl. (1) of s. 2 of Act XIII of 1859, an offence, 4 C. W. N. 253, 4 C. W. N. 201, 4 M. 234, 24 M. 660 27 C. 131, 33 B. 22.

—when the order of the Magistrate for repayment of advance or performance of a contract has been disobeyed, it is an offence but the proceeding before that is not a trial. 33 B. 22, 25 *contra* 20 M. 235, 11 A. 262.

—an application to take proceeding under s. 107, 110 or 145 is not an accusation in respect of offence. 16 P. R. 1893, 20 C. 729 27 C. 882.

—travelling in a train without proper pass or ticket is not an offence. 20 A. 95, 11 C. W. N. 100.

—inability to give a satisfactory account of oneself is no offence. 3 N. L. R. 51.

—use of a house as a brothel is not an offence, 6 S. L. R. 254 : 19 I. C. 1008.

—keeping of disorderly house is not an offence under the Eastern Bengal disorderly Houses Act. 37 C. 287.

—when an act may be a criminal offence or a mere civil wrong according to the intention of the person doing it no criminal action will lie unless the complainant can fully prove that the act is a criminal one and not civil. 1967 P. R. 50

—illegal seizure of cattle mentioned in s. 20 of the Cattle Tr. Act, 34 C. 926, 44 B. 42, 50 M. 841 : 100 I. C. 381 : 1927 Mad. 396 : 1927 M. W. N. 167, omission to stamp a share-warrant under s. 35 Indian Companies Act, 20 C. 676, are offences.

—gambling in a boat hired by the accused or in a compartment in a train is not an offence under the Bombay Act IV of 1887. 29 B. 226, 30 B. 126.

—the definition of offence in the Act is the same as given in s. 3 (37) of the General Clauses Act. It is wider to s. 40 I. P. C. and still more wide in the Extradition Act. 26 M. 67.

(p) officer in charge of a police station

—It does not apply to the Police in Calcutta or Bombay, 31 C. 557; 7 C. W. N. 661.

—an officer is said to be present at the station-house even though he happens to go out of the station and a search by him is legal. 36 M. L. J. 252; 25 M. L. T. 274; 42 M. 446.

—an Assistant sub-Inspector on tour during investigation is not an officer in-charge of the police station for the purpose of s. 154 Cr. P. C. when the first information report is made unless he comes within the strict definition of s. 4 Cl. (p). 1928 Cal. 771; 30 Cr. L. J. 803; 117 I. C. 601.

—the object of the definition is to permit of the discharge of duties which can only be done by an officer in charge of a police station, by some person who is deputed to look after that work. 42 M. 446; 25 M. L. T. 274; 36 M. L. J. 252.

—when the Sub-Inspector is ill if a cognizable case is sent to the Police for investigation and report, the Head Constable who is in charge of the Police station may investigate the case. 2 Pat. 379.

(r) pleader

—By the new amendment "pleader" includes the *Mukhtars* without being appointed with the permission of the Courts. Before this the *Mukhtars* were not, as of right, entitled to practise in the criminal court but they could do so when they received permission of the court. 30 A. 66 F. B. but see 7 C. W. N. 525, 15 C. W. N. 409.

—a District Magistrate cannot by a general order prohibit *mukhtars* to practise in the criminal courts. 29 Bom. L. R. 1587; 107 I. C. 56; 1928 Bom. 33; 29 Cr. L. J. 226.

—ss. 126 and 127 Evl. Act. apply to the *Mukhtars*, 25 C. 706.

—"other persons" embrace pure outsiders as well as duly qualified and enrolled *Mukhtars* who have failed to take out their certificates, 14 C. 556 F. B. 12 M. L. J. 354.

—it is open to the accused to appoint his estate manager to appear for him and plead and do other acts on his behalf and the manager is entitled to represent the accused as his pleader with such authority and permission. 1926 Bom. 218; 50 B. 250; 27 Cr. L. J. 111.

—a Magistrate cannot have a general order prohibiting a private *Vakli* from appearing and practising in all cases before him. 4 M. L. T. 91.

—a pleader is not bound to accept a brief offered to him nor to state his reasons for doing so. 12 C. W. N. 381.

—admissions made by the prisoner's *Vakli* cannot be used against him. 17 W. R. Cr. 49.

—the word "practice" does not mean the doing of acts habitually or often, but it signifies even the performance of a single act. 36 A. 380.

—a mere petition-writer cannot be said to practise. 18 W. R. Cr. 27.

—only persons entitled to appear, plead or act in court can be said to practise. 14 C. 556 p. 565.

(s) *Police station.*

—the clause does not apply to the Police in the town of Calcutta and Bombay. 31 C. 557.

(v) *Summons case.*

—commitment to the Court of Sessions in a summons case is improper. 1906 A. W. N. 28; 3 A. L. J. 14, (24 C. 529 and 8 A. 665) Dist.

(w) *Warrant case.*

—a commitment in a warrant-case is not necessarily illegal, 24 C. 429.

S. 5. Trial of offence under Penal Code and against other laws

—a Presidency Magistrate can try and convict an offender for offences under I. P. C. committed in a British ship on the High Seas, 25 B. 636.

—the provisions of this section do not include a contempt of the High Court committed by the publication of a libel out of court, when the court is not sitting, although such contempts may include defamations. 10 C. 109 P. C., 8 B. 387; 17 C. W. N. 1253.

—a conviction under the I. P. C. and also under a Special Law in respect of one and the same offence is illegal. 5 N. W. P. H. C. R. 49, 6 M. 249

—where the Special Act is silent the Cr. P. C. will apply. 31 B. 438.

—this Act does not apply to the searches under the Gambling Act, III of 1867 s. 5, which prescribes a special procedure. 3 Lab. 359.

—a rule framed under any Act is not an enactment within Cl. 2. 25 C. W. N. 661.

—the provisions of Chapter XXII of the Cr. P. C. are applicable to cases which have to be inquired into summarily under s. 20 of the Calcutta Rent Act. 37 C. L. J. 298; 71 I. O. 611.

—under the Madras Abkari Act an accused person has a right to be tried under a special procedure. 72 I. C. 175; 44 M. L. J. 231.

—the High Court has jurisdiction to transfer cases from the village Panchayats under s. 5 read with section 526 C. P. C., 49 A. 188; 99 I. C. 126; 28 Cr. L. J. 94; 1927 All. 199; 25 A. L. J. 157.

S. 6. (Class of Criminal Courts).

—the Commission appointed by the Viceroy to inquire into the conduct of the Maharaja of Panna, did not constitute a Court from which an appeal lay. 32 C. 1.

—the Defence of India Act (IV of 1915) does not take away any existing powers of Superintendence of the High Court but

S. 6. (Classes of Criminal Courts).—*contd.*

merely creates new Court which shall be independent of this Court
C. W. N. Pat. (1919) p 1.

—a Magistrate as such is not a court unless he is acting in a judicial capacity. 36 C 433.

—a Presidency Magistrate is not included in the term of District Magistrate and Magistrate of the first class. 32 M. 303.

—but the "Magistrate of the first class" used in s. 111 of the Emigration Act. (XX of 1883) means a Magistrate appointed to exercise the highest Magisterial powers, and includes a Presidency Magistrate 31 B. 661, 32 B. 10.

—the terms "Deputy Magistrates and General Deputy Magistrates" should not be used as they are unknown to this Code.
23 M. L. J. 670.

—Courts of Sessions belong to a class of courts different from the H. C 51 C 980

S. 7 Sessions Divisions and Districts.

—every Province is by operation of Law a Sessions Division or consists of Sessions Divisions There is no place which escapes the pervading force of the section. 10 S 274

—it is not competent to one Dt. M. to transfer a case to another Dt. M.—Construction of notification declaring boundaries between two districts. 46 I. C. 1007, 5 C. L. J. 145.

S. 9. (Court of Sessions).

—a Joint Sessions Judge cannot exercise the powers of Sessions Judge under Cl. 32 of the Act. 9 B. 104, 26 M. 137, 2 C. W. N. 303 (note).

—commitment of an European British subject to the court of Sessions by the Extra Assistant Commissioner, Quetta cannot be quashed under s. 215 Cr. P. C., 5 P. R. Cr. 1907; 41 P. L. R. 1907; 26 P. W. R. 1907.

—the expression "Court of Sessions" used in Cr. P. C. means a court established under s. 9 of the Code. The High Court exercising Original Criminal Jurisdiction is not a Court of Sessions within the meaning of the Cr. P. C., 51 C. 980; 29 C. W. N. 384; 26 Cr. L. J. 385

—If a Sessions Judge makes over an appeal to Additional Sessions Judge to be tried by the latter, he can afterwards withdraw the case from the latter and take it to his own file. 44 A. 157; 19 A. L. J. 951, 63 I. C. 491.

S. 10. (District Magistrate)

—an Additional District Magistrate is not subordinate to the District Magistrate. 34 C. 918, 20 Cr. L. J. 494, but see 25 P. R. 1908.

—a District Magistrate cannot disregard the order of the Sessions Judge. 5 L. B. R. 491

—Zilla Magistrate in the Bombay Regulation signifies only District Magistrate 3 B. H. C. R. Cr. 11, 7 B. H. C. R. Cr. p. 59

S. 10. (District Magistrate).—contd.

—a Presidency Magistrate is not a District Magistrate. 32 M 303.

—Deputy Commissioner in a non-Regulated Province comes under the designation of District Magistrate. 16 W. R. Cr. p. 1.

—the Code does not recognise any particular court as that of the Dt. Magistrate, but only courts of first, second and third class Magistrates. 3 A. L. J. 825.

S. 11. (Temporary District Magistrate).

—a reversion in the same District does not affect the jurisdiction. 3 C. L. J. 825; 1906 A. W. N. 201.

S. 12. (Subordinate Magistrate).

—an order of the Local Government under this section has no retrospective effect. 16 W. R. Cr. 79.

—a Magistrate has jurisdiction over the restricted. 29 C. 389; 228, 2 L. B. R. 80, 9 charge of a sub division 593; 1 P. L. T. 632.

—local area means a Sessions Division, District or Sub-division. 25 C. 858.

—the transfer of a Magistrate to another place in the same 22 M. 47, 15 P. R. 1884, even 203. But when he is relieved s 50 C. 664, 19 A. 114, 15 C.

—an order passed by a Magistrate who has been transferred, after the arrival of another Magistrate, is without jurisdiction. 3 A. 563, F. B. 19 A. 114

—an honorary Magistrate being a member of an independent bench, unless specially authorised, cannot act independently. 29 C. 483; 6 C. W. N. 596.

—an order passed by a Magistrate under the extent as conviction R. 1897 p. 1. in the section cannot

—a case out- 77: 59 I. if area but court "be

—it record a

S. 12. (Subordinate Magistrate).—*contd.*

confession in a place outside British India although the offence was committed within the District. 19 A. L. J. 355 : 62 I. C. 583.

—an order appointing an Honorary M. for a particular period is wrong. 120 I. C. 223 : 1930 Cr. C. 201.

S. 14. (Special Magistrate.)

—where the notification of appointment did not specify the local area within which the Magistrate was to exercise jurisdiction, it conferred jurisdiction throughout the Province. 25 C. 857, 19 Cr. L. J. 310, 24 P. R. 1901 : 96 P. L. R. 1901 (F. B.), 1918 P. R. 7, 48 P. L. R. 1918 : 44 I. C. 326.

—this sec. expressly authorises the Magistrate to try cases or classes of cases. Order of the Govt. to try "the case" authorises the M. to try the accused on three charges. 1927 Bom. 501 : 29 Bom. L. R. 936 : 106 I. C. 100 : 28 Cr. L. J. 1012

S. 15 (Bench of Magistrates)

—a Bench of Magistrates whether empowered under s. 224 or 225 cannot try a case of breach of the peace or any offence except those mentioned in ss. 222 and 225 Cr. P. C., 21 W. R. 12

—a Bench of Magistrates has power to enquire whether an alleged obstruction was in fact an obstruction or not 9 C. 38

—a Bench of Magistrates has no jurisdiction to try a charge for lurking house-trespass by night or house-breaking by night under s. 457, I. P. C. 23 W. R. 6.

—a conviction for an offence against any Municipal Law or Regulation, before a Bench of Magistrates which includes a salaried officer of the Municipality, is bad. 10 C. 194, 15 A. 192. F. B. Dist. 18 B. 442. *Ref.*

—two cases cannot be simultaneously heard by the Bench. 25 C. C. 182 : 69 I. C. 376.

—the High Court does not interfere where the Bench of Magistrates have before it materials which are sufficient in law to support a conviction. 21 W. R. 57, 11 B. H. C. R. 125 *Ref.* 21 W. R. 45.

—s. 18, Cr. P. C. confers full powers of the Presidency Magistrates on a Bench of Honorary Presidency Magistrates under the Code and the Bench therefore, can take action under s. 106, 7 Bom. L. R. 833, 17 O. C. 142 : 24 I. C. 604 (20 C. 870, 23 C. 194, 18 M. 394, 21 M. 246) *Ref.* 15 A. L. J. 463.

—it is extremely undesirable that cases involving difficult question of law or fact should be tried by Bench of Honorary Magistrates. 47 M. 116 : 47 M. L. J. 471 : 1924 M. W. N. 880 : 81 Ind. C. 894.

—but there is nothing providing that any particular class of cases should be tried by Honorary Magistrates. 81 Ind. C. 44 : 25 Cr. L. J. 556, 10 C. W. N. 1095, 29 O. 839. *Ref.*

—Rule 6 of the Rules framed by the Government of Bengal or the guidance of Benches of Honorary Magistrates, under the provisions of s. 16 of the Code Cl. (d), which provides that when the

S. 15. (Bench of Magistrate).—contd.

members of a Bench of Magistrates are even, the view of the Chairman shall prevail, is not inconsistent with the Code and therefore not *ultra vires*, though highly undesirable. 10 C. W. N. 642 : 3 C. L. J. 492 F. B. *contra*. 8 C. W. N. 862. But the Chairman's casting vote is condemned, 10 C. W. N. 642 but see below.

—a difference of opinion between two Honorary Magistrates forming a Bench is to be settled by the casting vote of the Chairman. 18 C. W. N. 384 : 19 C. L. J. 92 : 21 I. C. 1004 : 14 Cr. L. J. 684.

—reference by a Bench of Hy. Mgs. on difference of opinion between them to a Dt. M. is irregular and not justified by the Code. 27 I. C. 177 : 16 Cr. L. J. 113 (All.)

—in case of difference of opinion benefit of doubt should be given to the accused. 27 I. C. 177 : 16 Cr. L. J. 113, 15 A. L. J. 237 but according to the new rule 6 framed by the Bengal Government under s. 16 Cr. P. O. in case of difference of opinion between an even number of Magistrates, the case shall be referred back to the Dt. Magistrate or Sub Divisional Magistrate and when the case is referred back as above stated the provisions of s. 350 Cr. P. O. apply and when the accused does not demand *de novo* trial the M. is entitled to hear arguments and pass judgment without a fresh trial. 44 I. C. 328 : 19 Cr. L. J. 312 (O).

—a complicated and somewhat difficult case or one which is likely to be of a protracted character should not be referred to a Bench. 2 C. 23 : 25 W. R. Cr. 57.

—it is extremely undesirable that cases involving difficult questions of fact or law should be tried by a Bench of Honorary Magistrates. 47 M. 716 : 81 Ind. C. 894.

—where the Bench is of opinion that a case should be transferred from their file as it involves a difficult question it should itself move the matter officially without leaving it to the parties to move, 1929 Mad. 403.

—a decision given by a Bench consisting of a smaller number than required by law is illegal. 1902 A. W. N. 148

—an Honorary Magistrate who is member of a Bench which exercises third class powers, cannot, unless specially authorised, sit independently. 29 C. 483 : 6 C. W. N. 596.

—where the Bench but not the individual member could exercise the first class powers a case so triable could not be tried only by an individual member present at the adjourned bearing. 2 C. L. R. 348, 29 C. 483, 22 A. W. N. (1902).

—where one Bench recorded the prosecution evidence and at an adjourned date another Bench recorded the defence evidence and acquitted the accused the order was set aside for irregularity. 12 C. 558, 20 C. 870, 18 M. 394

S. 15. (Bench of Magistrate).—*contd.*

—changes of members during trial vitiate the trial. 1923 Oudh 163, 1 P. L. R. 1922 - 1923 Lah. 137.

—only those Magistrates who have heard the evidence can decide a case. S. 350 Cr. P. C. does not apply to Bench cases and there is no provision of law which provides for a change in the constitution of Bench of Magistrates. 23 C. 194, 13 C. L. R. 212, 21 M. 246 but when the case is rightly decided upon merits the irregularity of this nature does not vitiate the proceedings. 9 M. L. J. 335.

—an appeal lies under s. 407 from a conviction by a Bench with second or third class powers. 9 M. 36.

—the constitution of the Bench Court should not change in the course of the trial. 13 C. L. R. 212, 3 C. 754 12 C. 558, 20 C. 870, 18 M. 394, 23 C. 194 21 M. 246 *Dist*; although *quorum* might be found by some out of many. 41 A. 115 48 I. C. 344 44 B. 400, 23 Bom. L. R. 883; 63 I. C. 1516, 17 A. L. J. 369, 26 M. L. T. 352; 53 I. C. 828.

—judgment and conviction by some only of a Bench consisting of 6 Hy. Ms. is not illegal by reason of the fact that four of those who took part in the trial were not present to give final decision: 38 M. 797, 20 C. 870, 23 C. 194, 21 M. 246, 2 Weir 18, 3 N. L. R. 67 *contra* 544 B. 400: 55 I. C. 849.

—the fact that the President of a Bench was among those who thought that the accused were not guilty is no reason why he should not vote on the question of sentence when the accused were found guilty by the majority of the Bench. 100 I. C. 534, 1927 Mad 500: 23 Cr. L. J. 310.

—the object of constituting a Bench of Magistrates for conducting a trial is that the Magistrates constituting such Bench or at least two of them must attend every hearing and individually and collectively be in a position to apply their minds to the evidence recorded under s. 356 Cr. P. C. in their presence and hearing. 76 I. C. 566.

—where the Chairman of a Bench of Magistrates is opposed to the majority of a Bench one of the majority ought to be asked to write the judgment and that should form part of the record, so that the court may on revision know the reason for the opinion of the majority. 91 I. C. 394: 27 Cr. L. J. 90: 23 L. W. 536.

—where the President of the Bench is in a minority the judgment should be written by some member of the majority. 51 M. 338: 1928 M. W. N. 31: 106 I. C. 799: 29 Cr. L. J. 207: 1928 Mad. 197.

—the High Court does not interfere where the Bench of Magistrates have before it materials which are sufficient in law to support a conviction. 21 W. R. 57, 11 B. H. C. R. 125 *Ref.* 21 W. R. 45.

—s. 18 Cr. P. C. confers full powers of the Presidency Magistrates on a Bench of Honorary Presidency Magistrate under the Code and the Bench, therefore can take action under s. 106. 7 Bom. L. R. 833, 17 O. C. 142: 24 I. C. 604 (20 C. 870, 23 C. 194, 18 M. 394, 21 M. 246) *Ref.* 15 A. L. J. 463.

S. 15. (Bench of Magistrate).—contd.

—for convenience of administration a single Hy. M. may be directed to try cases arising in a certain area. 81 I. C. 41 : 25 Cr. L. J. 566, 10 C. W. N. 1095, 29 C. 389 *Ref.*

—one of the Bench of Magistrates may be empowered to try cases during the absence of others. 1924 A. 674.

—when only one of the Bench signed the judgment and the Dt. M. on appeal, sent back the case so that the judgment might be signed by others the procedure was not illegal. 41 A. 217 : 49 I. C. 774.

—an appeal lies under s. 407 from a conviction by a Bench with second or third class powers. 9 M. 36.

S. 16 (Power to frame rules for the guidance of Benches)

—a Bench is not legally constituted of two if the rules require three. 15 M. 410.

—when the rules provide for a quorum of two Bench Magistrates, the evidence recorded by one cannot be acted upon. 93 I. C. 1038 : 1926 Sind. 192 : 27 Cr. L. J. 542 · 20 S. L. R. 134.

—as to the application of notification issued prior to 1905. to Districts formerly in Eastern Bengal and Assam *see*. 18 C. W. N. 394.

—there is nothing to prescribe that particular class of cases should be tried by Honorary Magistrates. 81 Ind C. 44 : 25 Cr. L. J. 556

—according to U. P. rules in case of irreconcilable difference of opinion among the Bench the accused should be allowed the benefit of doubt and the case cannot be referred to the Dt. M. 16 Cr. L. J. 113 (A) 15 A. L. J. 237.

—a M. should not ordinarily make over protracted cases to Benches 2 C. 23.

—the Magistrate does not act without jurisdiction if in the absence of any demand for a *de-novo* trial on the part of the accused he hears arguments and passes judgment without holding a *de-novo* trial. 19 Cr. L. J. 312 (C).

S. 17 Subordination of Magistrate & Benches to D. M.

—a Collector is not subject to the High Court in Criminal matters. 10 C. L. R. 1.

—all Magistrates subordinate to the District M. are inferior to him. 12 C. 413 F. B., 7 A. F. B., 8 M. 18 F. B., 14 M. 339, 9 B. 100.

—the distribution of business is confined to the District Magistrate and cannot be exercised by the S. D. O. or the Senior Honorary M. 36 A. 468.

—"shall be subordinate to the Dt. M." means shall be inferior in rank. 9 B. 100, 12 C. 473, 7 A. 853, 8 M. 18 F. B. 38 P. R. 1985, 14 M. 399 and subordinate in respect of judicial as well as executive power. 2 A 205 F. B.

—Within the subdivision the jurisdiction of the D. M. and S. D. O. are co-ordinate. 4 A. 356.

S. 17. Subordination of Magistrate & Bench to D. M.—contd.

—S. D. O. acting as an executive officer but not as a court is not subordinate to the S. J. 2 Weir 155.

—District M. has no authority to disregard the order of the S. J. setting aside a conviction and directing a new trial. 5 L. B. R. 49 : 10 Cr. L. J. 77.

—the District Magistrate and not the Session Judge is the authority to whom the Sub-Divisional Magistrate is subordinate. 100 I. C. 961 : 8 Pat. L. T. 488 : 1927 Pat. 111, 28 Cr. L. J. 353 : 8 Pat. L. T. 498.

—cl. (1) of S. 17 empowers only the District Magistrate to make rules and pass orders. This power cannot be delegated to a subdivisional M. or to a senior Honorary M. 36 A. 468 : 25 I. C. 336.

—whether or not a Dt. M. has under this sec. power to order stay of a trial in an inferior court, an order staying a criminal trial until the decision of a civil court is not a proper order. 32 M. L. T. 191 : 44 M. L. J. 612 : 1923 M. W. N. 276 : 1923 Mad. 595.

S. 18 (Appointment of Presidency Magistrate)

—the powers of Presidency Magistrate are restricted by s. 487, 12 C. W. N. 246 : 7 C. L. J. 70 : 7 Cr. L. J. 103.

—a Presidency Magistrate can convict a person who has committed an offence on the High Seas on Board a British ship. 25 B. 636.

—the sec. confers the full powers of a Presidency Magistrate on a Bench of Honorary Presidency Magistrates and the Bench can take action under s. 106 Cr. P. C., 7 Bom. L. R. 833.

—a Presidency M. is not a District Magistrate or a Magistrate of the first class within s. 52 of the Prisons Act. 32 B. 303.

S. 20. (Local limits of jurisdiction)

—by the operation of this section a Presidency Magistrate is authorised to exercise the powers of a Magistrate within the limits of Port of Calcutta, within the meaning of s. 139 of the Calcutta Port Act. 24 C. W. N. 79 : 47 C. 147 : 30 C. L. J. 252.

—under sec. 20 the Presidency Magistrate, as one appointed for the whole of the Presidency town, has jurisdiction over all offences committed anywhere within the Presidency town. 97 I. C. 973 : 1926 Bom. 564 : 28 Bom. L. R. 1066.

—a Presidency M. has no jurisdiction to try offence under s. 52 as he is not a District M. or a first class M. 32 M. 303.

—powers of a P. M. and those of a Ceroner are to a certain extent concurrent. 31 C. L.

S. 21. (Chief Presidency Magistrates)

—in Bombay and Calcutta all Presidency Magistrates and Benches are subordinate to the Chief Presidency Magistrates and the latter can transfer cases from one file to another. 1 Bom. L. R. 347 but in Madras they are of equal jurisdiction. 10 M. L. T. 518 : 12 Cr. L. J. 451.

S. 21. Chief Presidency Magistrates.—contd.

—s. 18 has conferred Magistrate and the Chief F those powers, 7 Bom. L. R. question the jurisdiction of the Chief M. when he revives a case and sends it for trial. 7 C. W. N. 527.

—under rules 9 and 10 framed by the Govt. of Bombay under this sec. the opinion of the senior Magistrate should prevail in case of difference of opinion. 1927 Bom. 630 : 29 Bom. L. R. 1470 : 106 I. C 209 28 Cr L. J. 1025 : 9 A. I. Cr. R. 190,

S. 22. Justices of the Peace for the Muffassal.

The amendment has removed the necessity of being an European British subject for being appointed as a Justice of the Peace.

—a justice of the peace appointed under the Extradition Act (XV of 1903) has jurisdiction to commit a person charged with an offence against Mysore Mines Regulation 1807, for trial to the Madras High Court, 26 B. 607.

—jurisdiction of Justices of the Peace to try a person for an offence committed on the High Seas. 25 B. 636.

—the powers conferred on Justices of the Peace are the ordinary powers conferred on first class Magistrates under s. 36 Cr P. C. It does not include the power to entertain complaints. 34 B. 343 : 12 I. C. 303.

S. 25 (Ex-officio Justices of the Peace.)

—the court will take judicial notice that a certain person was a Justice of the Peace 15 W. R. Cr. 71 (note)

S. 28 (Offences under the Penal Code.)

—the illustration is new and is intended to show that an offence may appear in Sch. II as triable only by Magistrate, if the case is before the Court of Sessions on commitment made for a more heinous offence the Sessions Court is expected to hold the trial for the minor offence alone. 19 A. 465, 8 A. 665.

—a M. can commit a person charged with an offence under s. 147 I. P. C. to the Sessions Court though the Schedule says that the offence is triable by him. 24 C. 429.

—but when the offence falls under special law specifying the forum on some particular court, it cannot be changed. 19 A. 465.

—the jurisdiction of a M. is not ousted merely because the same facts disclose a more serious offence beyond his jurisdiction, 24 M. 675, 2 Weir 20, but a tribunal cannot clutch jurisdiction by intentionally ignoring facts of aggravated character. 12 M. 54, 2 Weir 21, 13 B. 502, 4 N. L. R. 18.

—a M. cannot decline jurisdiction on the ground that the offence is a petty one to be redressed by the Heads of the villages. 7 M. H. C. R. App. 31 or on the ground that it falls within the jurisdiction of ecclesiastical authority whose action plainly amounts to an offence. 8 M. 140.

S. 29 (Offences under other laws).

—a Magistrate has jurisdiction to try a landlord for an act specified in s. 58 (2) B T. Act, in the same way as he would try a summons case, the Act not having specified any particular Magistrate to try such offence. 9 C. W. N. 816; 2 Cr. L. J. 532

—an offence under special law triable by M. with special powers cannot be tried by ordinary M. (1886) A. W. N. 289. So an offence under the Opium Act is triable only by a M. and not by S. C. 19A. 465, an offence under s. 16 of the Bombay Village Police Act is triable only by Police Patels and not by Taluk Magistrates. Ratanlal 196, an offence under Madras Act 1 of 1868 is triable only by Magistrate and not by H. O. 5 M. H. C. R. 277, an offence under the Prisons Act is not triable by a Presidency M. 32 M. 303 and an offence under s. 83 of the Registration Act is triable by a M. not inferior to a M. of the second class 7 M. 347.

S. 29 A Trial of European British subject by 2nd and 3rd class Magistrates.

—the claim to be tried as a European British subject must be made before the inquiry or trial commences and not at any subsequent stage. 54 C. 1041

S. 29 B. (Jurisdiction in the case of juveniles).

The introduction of s. 29 A. by the Amending Act has practically ousted the jurisdiction of second and third class Magistrates over European British subjects except in a very few cases.

The introduction of s. 29 B in the Amending Act has empowered the Dt. M., Pry M or any Magistrate having special power to try juvenile offenders unless the offence is so serious as to be punishable with death or transportation for life.

—a sentence passed on the juvenile offender cannot be more severe than that imposed on his adult co-accused with previous convictions. 23 Bom. L. R. 1199.

—an offence committed under s. 130 Railways Act by a child is triable only by a District Magistrate and not by a First Class Magistrate 110 I. C. 589; 1928 Lab. 909; 29 Cr. L. J. 733; 29 Punj. L. R. 536.

S. 30 (Offences not punishable with death).

—this section must be read as qualifying or controlling the provisions of s. 28 which in its turn makes reference to column 8 of the second schedule. 95 I. C. 56; 6 Cr. R. 380.

—when a Deputy Commissioner tries a case exclusively triable by a Court of Sessions under powers conferred on him by this section, he does so as a Magistrate and if he tenders conditional pardon, he is precluded from trying the case himself. 10 C. W. N. 847; 4 Cr. L. J. 44.

—the District Magistrate cannot try cases summarily when specially empowered under this section. 25 P. R. 1879 Cr.

—a Sessions Judge is competent under s. 437 to revise the order of the District M. empowered under this section. 15 P. R. 1904 Cr.

S. 33. Power of M. to sentence in imprisonment in default of fine.

—imprisonment in default of fine need not always be proportionate. 1 Bur. L. R. 483

—a M. cannot pass a sentence of imprisonment under this sec. in excess of the term prescribed by s. 65 I. P. C., 10 M. 165, 166 (note), 1 A. 465, 1 M. 277 *overruled*

—in cases of simple imprisonment, ordered as a process for enforcement of payment of fine, the rule in this sec. applies. 6 A. 61.

—a sentence of four months imprisonment in default of payment of fine is illegal, 3 L. L. J. 346 · 59 I. C. 848.

S 34 Higher powers of certain District Magistrates

—under this sec. read with s. 33 a Dt. M. in trying a case under s. 478 I. P. C. can pass a sentence of imprisonment for one year and nine months in default of payment of fine, 1885 P. R. 35, and a M. can, under s. 59 I. P. C. pass a sentence of transportation for seven years instead of awarding a sentence of imprisonment. 9 W. R. 6.

S. 35. (Sentences in cases of conviction of several offences at one trial.)

—*The repeal of the explanation and the illustration and the omission of the words "distinct offences" have set at rest the conflict of cases as to what are and what are not "distinct offences" under the Old Code and by the amendment the section will now be controlled by the provisions of s. 71.*

—under the amended Act separate sentences can be passed under s. 35. Cr. P. C. read with s. 71 I. P. C. for offences under ss. 380 and 457 I. P. C., 41 C. L. J. 563. (23 B. 706 F. B., 37 C. L. J. 171). *Ref.*

—separate sentences under ss. 147 and 332 I. P. C. are not illegal in view of the present amended section. 95 I. C. 600: 27 Cr. L. J. 824: 1926 Lab. 521.

—after the amendment of the Cr. P. C. the court can pass separate sentences for offences under ss. 148 and 326 I. P. C. But the two sentences must not exceed the powers of the court. 49 B. 916: 27 Bom. L. R. 1371.

—under the amended sec. the offences need not be distinct to enable the Magistrate to pass consecutive sentences. Separate sentences under s. 35 I. C. 368: 1928 Bom. : . . .

—separate sentences are legal when it is proved that each person took an individual part in the assault. 41 C. L. J. 471: 89 I. C. 241: 1925 Cal. 1039: 116 I. C. 216: 1929 Lab. 670: 1929 Cr. C. 210.

—the fact that under s. 146 I. P. C. the use of force or violence is a necessary ingredient of the offence of rioting does not render the separate sentences illegal. 41 C. L. J. 471: 89 I. C. 241: 1925 Cal. 1039

S. 35. (Sentences in cases of conviction of several offences at one trial.)—contd.

—separate sentences under section 380 and 457 I. P. C. are not illegal under the recent amendment of this section 41 C. L. J. 563 : 88 I. C. 997 : 1925 Cal. 1315.

—an accused can be convicted both under s. 325 and s. 149 I. P. C. at one trial. 95 I. C. 606 : 27 C. L. J. 830 : 1926 Nag. 459.

—an accused can be convicted both under s. 325 and s. 149 I. P. C. at one trial. 95 I. C. 606 : 27 Cr. L. J. 830 : 1926 Nag. 459.

—under this sec. a person convicted of offences under ss. 147 and 225 I. P. C. is not liable to separate punishment for each offence as the two offences are not distinct. 37 C. L. J. 171 : 74 I. C. 1043.

—when sentences under two sections are passed they will be interpreted as to run concurrently. 22 A. L. J. 263 : 81 I. C. 640.

—where the common object of the unlawful assembly was the theft of crops the accused cannot be separately convicted under two ss. 379 and 143 or 144 I. P. C. 5 Pat L. T. 571 : 82 I. C. 284.

—when the accused is convicted at one trial of two or more distinct offences the court can direct them to run concurrently. 47 A. 59.

—regarding the right of appeal consecutive sentences are to be taken in the aggregate as one sentence but the sentence of imprisonment in default of payment of fine is not to be reckoned. Punj. Rec. 1892 p. 22.

—when conviction is on two offences but the accused is acquitted of one offence in appeal the sentence may be maintained as being concurrent sentences under each section. 81 Ind. C. 640 (A) : 22 A. L. J. 263 : 25 Cr. L. J. 992.

—an offence cannot be split up into its component parts in order to empower the court to try the case summarily or to deprive the accused of the right of appeal. 4 C. 18, 4 C. W. N. 795 : 27 C. 983.

—offence that should be tried separately cannot be tried jointly. 5 C. W. N. 866 : 25 M. 61 P. C., and sentences cannot be passed to run concurrently. 7 W. R. Cr. 59, 10 B. 254.

—where the common object of riot and criminal trespass or wrongful confinement was the same, separate sentence was not legal. 8 C. W. N. 305, 483.

—when a person first holds himself out as a public servant which he is not and then commits extortion and the first is complete before the second is completed, he is to be punished separately. 10 A. 58.

—a person convicted for one or more offences forming one and the same transaction can only be punished for the principal offence. 7 W. R. Cr. 13.

—this sec. applies only to conviction of offences and does not apply to imprisonments under s. 123 of the Code. 5 Bom. L. R. 26, 4 Bom. L. R. 876.

—a person convicted of offences under ss. 147 and 225 I. P. C. is not liable to separate punishments for each offence as the offences,

S. 35. (Sentences in cases of conviction of several offences at one trial.)—*contd.*

are not distinct. 37 C. L. J. 171; 74 I. C. 1043, 8 C. W. N. 834; *Ref*

—this sec covers cases of the description where one of the punishments is imprisonment while the other is transportation. 21 C. W. N. 608; 23 C. L. J. 596; 34 I. C. 654.

—this sec. refers only to conviction for two or more offences at one trial, it does not apply to sentences passed at different trials. 7 W. R., 113 A. 305, 20 C. W. N. 1330, 1881 A. W. N. 23, 1886 P. R. 14, 1881 A. W. N. 32, 2 Weir 30; 46 P. R. 1917; 43 I. C. 799.

—separate sentences for the offence of rioting and grievous hurt were not legal when it was found that the persons were guilty of an offence only under s. 149 I. P. C., 16 C. 422 F. B. *overrules* 11 C. 349, (3 C. W. N. 761, 4 C. W. N. 245, 8 C. W. N. 344) *followed*, but it is legal if the accused took an individual part in the assault. 41 C. L. J. 471, 16 C. 725, 19 C. 105, 40 C. 511.

—separate sentences of fine under s. 143 and 379 are not contrary to s. 71 I. P. C., 2 C. L. J. 66 (note) but the courts have generally set aside one sentence since the addition of illustration to the section. 3 C. W. N. 174, 4 C. W. N. 245, 8 C. W. N. 305, 344, 483, 23 B. 706, 51 C. 79.

—if the offences are not separate the awarding of two separate sentences is illegal. 18 M. L. T. 121.

—the word "may" shows that this sec. permits and does not make it obligatory on courts to pass separate sentences in one trial, L. B. R. (1872-1892) 271, L. B. R. (1900-1902) 33, 1 Bur. L. R. 271.

—a separate sentence of two years *x. i.* and fine under ss. 369 or 380 and 454 I. P. C. may legally be passed when the two offences form part of the same transaction and are tried together. 10 A. 146, 12 M. 366, 10 B. 493, 23 B. 706 F. B., 20 M. 444, 3 A. 30, F. B., 7 A. 414, 9 A. 645, 22 C. 131, 1 W. R. 7, and so also for riot and hurt when the total sentence does not exceed the minimum which the court might pass for any of the offences. 17 B. 260.

—theft committed in the same room, of articles of different persons does not constitute distinct offences. 11 W. R. 38 but when several seals of different descriptions are found with the accused with intent to commit forgery, unless they were intended for committing one particular forgery, there is a complete and separate offence for every seal so found. 13 W. R. Cr. 16.

—order cannot be passed directing the sentences passed on the same accused in several trials to run concurrently, 20 C. W. N. 1300; 24 C. L. J. 54, 22 C. W. N. 597, such order can be made only when the accused is convicted at one trial of two or more distinct offences, 146 P. L. R. 1911; 10 I. C. 156, 37 C. 467; 14 C. W. N. 1114, 22 B. 112, 13 C. W. N. 1062 *Ref*.

—offences under Penal Code and also under any Special or Local law cannot be regarded as distinct offences regarding the punishment to be awarded. 22 C. 131, 5 N. W. P. 49.

S. 35. (Sentences in cases of conviction of several offences at one trial.)—*contd.*

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Concurrent Sentences.

Under the amendment of s. 397 Cr. P. C made at the end of the first para, it is no longer illegal to make the sentences in the two trials concurrent.

—under s 35 (1) the court can direct that sentences should run concurrently but it is so only when the accused is convicted at one trial of two or more distinct offences. The Court has no power to order sentences to run concurrently with the sentences passed in other trials. 47 A. 59 : 85 I C. 714 : 1925 A. L. J. 305 : 26 Cr. L. J. 570.

—a sentence is defective when it does not determine whether the sentence of imprisonment and transportation are to run concurrently. 23 C. L. J. 596.

—the court must expressly direct whether the sentences are to run concurrently or consecutively. 21 C. W. N 608. 23 C. L. J. 596

—a sentence of imprisonment cannot be directed to pass concurrently with sentence of transportation for life 21 P.R. 1913 : 5 P. L. R. 1914 : 22 I. C. 420.

—It is illegal to direct that a sentence of imprisonment for an offence should take effect after the expiry of the sentence the accused is undergoing for default of furnishing security for good behaviour, 30 I. C. 446 : 16 Cr. L. J. 622 : (31 M. 515, 4 M. L. T. 223, 8 Cr. L. J. 402) *Ref.*

—where an accused was sentenced to suffer rigorous imprisonment for one day and to pay a fine of Rs. 150, and in default to suffer rigorous imprisonment for 3 months for each of two offences, the sentences runolog concurrently, held that the passing of concurrent sentences of imprisonment in default of fine imposed for two offences was not legal under this section, but the substantive term of imprisonment for 1 day may run concurrently. 91 I. C. 543 : 27 Bom. L. R. 1351 : 1926 Bom. 62.

Appeal.

—s. 35 CL (3) refers only to sentences of imprisonment and not to sentences of fine when it says that several offences at one trial should for the purpose of appeal be deemed to be a single sentence. 96 I. C. 270 : 28 Bom. L. R. 658 : 1926 Bom. 415 : 27 Cr. L. J. 926.

—concurrent sentences do not come within the meaning of aggregate punishment for the purpose of this section or for the purpose of raising the forum of appeal. 3 P. L. J. 133 : 19 Cr. L. J. 90.

Appeal—contd.

—for the purpose of appeal an aggregate sentence of one month under each of two sections is to be taken to be single sentence of two months even if the sentences are to run concurrently. 15 C. W. N. 734; 15 C. L. J. 82, 17 C. W. N. 72, *contra*. 17 C. L. J. 392, 17 C. W. N. 825, 40 C. 631, 16 C. W. N. 284 (note).

are not individually appeal-
ably. 40 C. 631, 25 C. W. N.
138. 19 Cr. L. J. 90, 17 C. L.
contra. 17 C. W. N. 72, 15

C. W. N. 734.

S. 39 (Meds of conferring powers).

—when a second class Magistrate before passing a judgment is invested with the first class powers he can pass sentence as a first class Magistrate. 10 C. W. N. 293 (note), 7 A. 414 F. B.

—when a class of officials are invested with certain powers by notification they are only "generally" so empowered and not specially which refers to the empowering of a particular official by name or virtue of his office. 17 M. L. T. 191.

S. 40. (Continuance of powers of officers transferred.)

—transfer to another District does not determine the powers of Magistrate. 12 C. W. N. 448

—but a Magistrate after being released on being transferred cannot pass sentence. 19 A. 114, 15 M. 132

—a Head Assistant Magistrate becoming a Deputy Magistrate of another place in the same District can proceed with a case already begun. 22 M. 47.

—if a M. vacates his office by absenting himself without leave he loses his power. 2 Bom. L. R. 536.

S. 40 (Public when to assist Magistrate & the police)

—the aid demanded must be reasonable. 3 A. 201, 42 A. 314

—a police officer can demand the aid of the chowkidar in preventing the escape of a person and the custody of the person so taken by the chowkidar is for the time being lawful custody. 6 C. W. N. 337.

—the sec. contemplates personal assistance. 2 Weir 37.

—the law however does not give the police officers general power of calling upon the members of the public to join them in arresting a number of unknown persons whose whereabouts are not known. 42 A. 314.

S. 44. (Public to give information of certain offences).

—the first information report can only be used by the prosecution for the purpose of corroborating in the witness-box the person who supplied the information; if the informant himself can speak only from hearsay, the report cannot be used to corroborate such inadmissible evidence. 7 Lah. L. J. 259; 26 Punj. L. R. 601; 1925 Lah. 418; 90 I. C. 145.

S. 45. (Village headman, accountants, landlords and others bound to report certain matters).

—the duty to give information to the police is cast only on the owner of the land and does not extend to the owner of a house 30 Bom. L. R. 1570: 53 B. 184: 113 I. C. 510: 1929 Bom. 12: 30 Cr. L. J. 172, 12 M. 92 *fol*

—residence in the dwelling house of another is not occupation of land within the meaning of the section 23 W. R. Cr. 60, 12 M. 92.

—to support conviction knowledge of the accused must be shown, 22 W. R. Cr. 42, mere rumour will not suffice. 1900 M. W. N. 207, 5 Pat. L. T. 505: 81 I. C. 62.

—a Dewan may be agent, if the master is absent, but not one who acts only under the orders of the Resident master. 4 C. 603. 3 C. L. R. 87

—as to the liabilities of landlords, &c, for the acts and omissions of their agent see 21 C. 501.

—if the police have already got information no penalty under the section should be enforced 4 C. 623, 20 C. 316, 7 M. 436, 23 Cr. L. J. 162.

—it is incumbent on the *choukidar* to communicate to an officer in charge of a Police Station information from his knowledge and not from rumour. 81 Ind. C. 620: 1924 Pat. 181: 5 P. L. T. 505: 25 Cr. L. J. 972

—a village headman in Madras means a Village Munsiff or Village Magistrate. 32 M. 258.

—every *mukkaddam* and *kolwar* in C. P. has to perform the duties of village headman. 7 N. L. R. 101: 66 I. C. 1001: 23 Cr. L. J. 345, 1922 Nag. 87.

—a *Zaildar* is not a village headman. 1894 P. R. 25, 1886 P. R. 19

—the information to be given to the Police under cl. (c) is that of commission of an offence. 5 M. L. T. 257.

—if the offence is a *ballahla* one, persons enumerated are not bound to give information. 32 M. 258.

—occurrence of death when should be reported. 23 W. R. 60, 11 C. 619, 1887 P. R. 20, 23 Cr. L. J. 345 (Nag.): 66 I. C. 1001.

—a death cannot be said to be unnatural within s. 45 so as to require to be reported immediately unless it occurred fairly soon after the cause. 66 I. C. 1001: 23 Cr. L. J. 345: 1922 Nag. 87: 7 N. L. R. 101.

S. 46 (Arrest how is to be made).

—the officer making the arrest must have the warrant in his possession 5 A. 318

—when the act of the person, making the arrest is entirely *ultra vires* the right of private defence may be exercised against him. 16 C. W. N. 549.

—an arrest by a mere oral declaration without actual touch is not a legal arrest. 113 I. C. 288: 30 Cr. L. J. 128.

S. 46. (Arrest how is to be made)—*contd.*

—it can't be said that no arrest can be lawfully made without compliance with the provision of s 80 Cr. P. C. because a Police officer may justify his action under s 46 (2) Cr. P. C., 53 C. 831; 49 C. L. J. 264; 1929 Cal. 174, 32 C. W. N. 284; 116 I. C. 723; 30 Cr. L. J. 703.

S. 47. (Search of place entered by person to be arrested).

—this sec. empowers the police to enter the place to be searched and compels householders to afford the police facilities in carrying out their duties. 41 C. 350.

S. 48. (Procedure where ingress not obtainable.)

—this sec. provides that if any difficulty is placed in the way of a Police officer, he may use force to obtain ingress. 41 C. 350.

—a police officer entering a building for the purpose of arresting a suspected person will not be liable for trespass. 36 C. 433.

S. 50. (No unnecessary restraint).

—detention of a person while the police officer consults his superior as to whether he should take cognizance, is not justifiable. 24 W. R. Cr. 51.

—a public officer cannot offer unwarrantable violence to a person in custody. 17 W. R. Cr. 36.

S. 51 (Search of arrested person.)

—an order under the section does not come within s 517 Cr. P. C. and is not therefore appealable. 14 C. 834, 30 C. 690, 1 B. 630

S. 53. (Power to seize offensive weapons).

—custody of offensive weapons. 19 W. R. Cr. 7.

S. 54 (When police may arrest without warrant)

Clause (a) has been added to the amendments.

on his personal responsibility. 44 C. 50

warrant has not been entrusted to him. 40 M. 1028, 81 Ind. C. 140 and even when he is not in uniform. 81 Ind. C. 140, 21 A. L. J. 791.

—where the substance of the warrant was not explained to the person to be arrested, held that the arrest was legally effected under section 54 Cr. P. C. which gives the statutory power to a constable to arrest without warrant and that the power so given was in no way limited by the issue of a written order. 98 I. C. 254; 1926 Pat. 424; 8 Pat. L. T. 237.

—as to the duties of the Police acting under this section, see observations of High Court in 7 W. R. Cr. 3, 20 C. W. N. 1233.

S. 54. (when police may arrest without warrant)—contd.

—as to "reasonable suspicion" and "credible information" *see* 44 C. 76, 12 B. 377, 36 A. 6, 22 Cr. L. J. 758 (A), 2 Pat. 379, 21 A. L. J. 791.

—arrest under *bonafide* belief is a good defence, 12 B. 377 but when a Police officer does not act in good faith he is not protected by ss. 54 or 79. 10 W. R. Cr. 20, 47 M. 442.

—the Magistrate having jurisdiction to take cognizance of an offence should not consider the question of the legality of the arrest. 26 M. 124, 31 C. 567. 7 C. W. N. 651

—a village chowkidar is not a Police officer within this s. 27 C. 366, 5 M. 22, 1 C. W. N. 98 (note), 3 A. 60, 35 C. 361, 41 C. 17, but he is so within s. 25 of the Evi. Act, 2 C. W. N. 71, 637, 9 C. W. N. 474, 26 C. 560.

—a Native State Policeman cannot arrest in British India a person suspected to have committed an offence in such State and the subsequent custody of a chowkidar in British India is also illegal. 29 A. 377, 19 B. 72.

—but Cl 7 authorises the Police in British India to arrest without warrant a British subject committing any of the offences enumerated in the first Schedule of the Extradition Act outside British India. 7 Bom. L. R. 463.

—the complaint referred to in the sec. need not be made to the constable himself, and it is sufficient that it was made to a person entitled to entertain it 64 I. C. 278 : 1922 A. 457 : 22 Cr. L. J. 758, 2 P. 379 : 4 Pat. L. T. 521.

—in case of resistance to the police it is not sufficient for the prosecution afterwards to say that the constable had authority to arrest under some other provision of law 47 M. 442

—to apprehend a person found with stolen property formal complaint is not necessary. 8 W. R. Cr. 28.

—the words "may arrest" show that the power of arrest is discretionary. Ratanlal. 795

—authority to arrest under this sec. implies authority to detain. Ratanlal. 220.

or robb	Actual thief
	43 A. 186.
person	rest of a
guilty	offence is
entrust	was not

—though under s. 54 a Police Officer may arrest without offence, under s. 60 he is bound to take or send the person arrested and must be done within 24 hours.

—a bare assertion of the commission of an offence does not amount to reasonable suspicion or credible information on the basis of which an arrest can be made without warrant 29 C. W. N. 984 40 C. L. J. 489.

S. 54. (when police may arrest without warrant)—contd.

—s 51 gives wide powers to the police officer, to make arrest without an order from a M. and without warrant only in certain circumstances limited by the provisions contained in the sec., and it is necessary in exercising such large powers to be cautious and circumspect. 20 C. W. N. 1233 : 44 C. 76

S 55. (Arrest of vagabonds, habitual robbers &c.)

—this sec. is expressly made applicable to the Police of Calcutta 31 C. 557 : 7 C. W. N. 661.

—an officer of a Police Station may arrest a person under this section against whom the Police are about to take proceedings under s. 110 Cr. P. C., 35 A. 407, 21 I. C. 666

—the power given under this section should be exercised when there is good reason to apprehend that serious harm will result
 Magistrate to be dealt with
 a person arrested should

competency of the Magis-

24

—mere suspicion of the Police Officer about the accused does not justify arrest 81 Ind. C. 51 : 47 M. 442.

—authority to arrest must be shown 81 Ind. C. 51 : 47 M. 442.
 where a P. O. has passed an order of release, a re-arrest of proceeding against him jurisdiction. 41 A. 483 :

S. 56. (Procedure in case of deputation of subordinate Police Officer).

Provision has been made to inform the person, to be arrested by the subordinate police-officer, the substance of the order and if demanded, to show him the same ; this overrules the ruling reported in 27 C. 320.

—where a Constable arrests a person suspected of dacoity under the oral order and in the presence of the Head Constable, the arrest is legal. 11 W. R. Cr. 20, 7 W. R. Cr. 3.

—a chowkidar is an "officer subordinate" and arrest by him when authorised is legal. 10 C. W. N. 287.

—s. 80 Cr. P. C. does not apply to Police Officer acting under this section. 27 C. 320 : 4 C. W. N. 311.

—mere writing of the name of the subordinate on the back of
 constitute
 arrest the
 would make

is a valid order in writing. 18 A. 240.

—the issuing of a warrant by a M. does not exclude the jurisdiction of the Police officer under this sec. 18 A. 246.

—a chowkidar arresting an accused is not bound to show him the order given by the officer in charge of the Police Station unless he was asked to produce the order. 85 I. C. 427 : 26 Cr. L. J. 795.

S. 57. (Refusal to give name and residence)

—when a person being asked by a police constable not to create any disturbance in the public road declined to do so and refused to give his name and address, the constable was justified in detaining him
 Bom. L. R. 597.
 the name and address of the person creating such disturbance, their action of detention was not justified 46 M. 605 F. B.

S. 59 (Arrest by Private Person)

Sub-sec. (1) has been amended by adding the words "or cause him to be taken in custody" giving effect to the ruling in 29 A. 575 as cited below.

—for the sake of preservation of peace any individual may arrest, 44 M. 913.

—power of arrest is restricted to non-bailable and cognizable offences committed in presence, and to a proclaimed offender. 11 M. 480.

—to apply the sec the offence must be committed in *presence* of the private person 35 C. 361, 1922 P. L. R. 19:23 Cr. L. J. 3: 64 I. C. 371, 1922 Lah. 73.

—s. 59 empowers a private person to arrest any person who, in his view, commits a non-bailable and cognizable offence. One who attempts to arrest a thief running away after theft is not protected by this section. 64 I. C. 371: 23 Cr. L. J. 3: 1922 P. L. R. 19:1922 Lah. 73.

—the words "in his view" should not be construed too strictly, 81 Ind. C. 312: 18 L. W. 818: 25 Cr. L. J. 782.

—the words "in his view" in this section mean "in the presence of" or "within the sight of". When a person is found hiding in the house of another he cannot be arrested by a private person under this section, as hiding alone does not amount to a non-bailable and cognizable offence. 89 I. C. 1030: 7 Pat. L. T. 65: 1925 Pat. 53: 26 Cr. L. J. 1462.

—where a private person arrested another person who in his view committed a non-bailable and cognizable offence but instead of taking him to a Police Officer or to the nearest police station as required by s. 59, Cr. P. C. kept him in his own custody, he was guilty under s. 342, I. P. C., 98 I. C. 594: 8 Pat. L. T. 204

—where a person is found to commit the offence of the offence of extortion, his arrest would be legal under this sec 5 Pat. L. J. 129: 54 I. C. 987: 1 P. L. T. 60.

—a private person lawfully assisting a person for theft committed in his view may send him to the Police station by a chowkidar, and the custody of the latter is then lawful, 29 A. 575, 23 A. 266, 17 M. 103 and the rescue from the custody of the private person is punishable under ss. 225 and 225 B. 11 M. 441, 480, 23 A. 260, 17 M. 103.

—but if the theft is committed in his view the custody of both is illegal. 5 M. 22, 27 C. 386: 1 C. W. N. 93, (note.)

S. 59. (Arrest by private persons)—contd.

—a village chowkidar is not a Police Officer within the meaning of the section. 27 C 366 : 4 C W. N. 252, 17 C. W. N. 978, 3 A. 60, 41 C. 17.

—a person rescuing a person from the custody of a village Chowkidar to whom a private person has made him over, is not guilty under s. 225 I. P. C. But the custody would be legal if he acted under s. 42, Cr. P. C., 6 C. W. N. 337.

S. 61 (Person arrested not to be detained more than twentyfour hours).

—the provision of the section is imperative. 19 W. R. Cr. 36.

—a remand to Police custody is to be granted only in case of necessity. 3 N. W. P. 275

—the intention of the Legislature having regard to ss 61 and 167 Cr. P. C. is that an accused person should be brought before the M. with as little delay as possible. 51 C. 402 : 38 C. L. J. 388, 81 Ind. C. 220, 11 M. 98, 36 C. 166, 6 M. 69.

—the precaution laid down in ss 54, 60, 61 seems to be designed to secure that within not more than 24 hours some M. shall have seen of what is going on. 28 C. W. N. 850, 82 Ind 131.

—at the expiration of the maximum period of 15 days or additional time requisite to bring the accused before a Magistrate, the accused must be released under s. 169 or proceeded against by the M. under s. 173, 28 C. W. N. 490 : 83 Ind C 628.

—this section does not apply to the Calcutta Police Officers who are governed by the Calcutta Police Act (IV of 1866) which contains no provision analogous to this section. 44 C L. J. 134 : 97 I. C. 945

S. 68. (Form of summons).

—the practice of signing by initial only or using the stamps is objectionable. Punj. Vol. 11 P. 151.

signed. 5 C.

3 P. L. J.

455, 5 A. 455.

—It is not proper to make the only order 'file' on petition paying process. 6 C. W. N. 548.

—a summons not sealed is not valid and disobedience to it is no offence. 37 M. L. J. 588 : 58 I. C. 528 : 21 Cr. L. J. 800, 1 Weir 100.

—when a summons is defective a conviction under s. 174 I. P. C. cannot stand. 5 A. 7, 20 M. 31, 7 M. H. C. R. App 43, 37 M. L. J. 588.

—a person summoned should wait a reasonable time and should not go away on finding the Magistrate absent. 10 B. 93.

—It is the only sec. providing for the issue of summons under this Code, and summons to an assessor must comply with its terms. 1 C W. N. 116 note.

S. 69. (Summons how served).

—mere showing the summons to a witness is not sufficient. 5 B. H. C. R. Cr. 20, 11 M. 137.

—refusal to give receipt is not an offence under sec. 173 or 180 I. P. C., 3 C. 621 20 C. 358, 5 Bom. H. C. R. Cr. 34

—this is the only sec. providing for the procedure of service of summons. 1 C. W. N. 116 (note.)

—the procedure provided by s. 71 cannot be made use of unless service in the manner mentioned in ss 69 and 70 cannot be effected by the exercise of due diligence. 43 C. L. J. 113 : 94 I. C. 907 : 1926 Cal. 1208 : 27 Cr. L. J. 715 : 31 C. W. N. 148.

S. 70. (Service when persons summoned cannot be found).

—in the Presidency Towns and in the Muffasil a summons can be left with the servant. 2 C. L. J. 48 (note.)

—summons to a juror cannot be served on his servant. 1899 A. W. N. 13.

—the procedure provided by s. 71 cannot be made use of unless service in the manner mentioned in ss 69 and 70 cannot be effected by the exercise of due diligence. 43 C. L. J. 113 : 94 I. C. 907, 1926 Cal. 1208 : 27 Cr. L. J. 715

S. 71. (Procedure when service cannot be effected as before provided.)

—where sufficient steps have not been taken to serve the accused personally and there has been want of reasonable diligence in service, substituted service should not be allowed. 6 N. L. J. 63 : 23 Cr. L. J. 739, 69 I. C. 627 : 23 Cr. L. J. 739.

—the procedure provided by s. 71 cannot be made use of unless service in the manner mentioned in ss. 69 and 70 cannot be effected by the exercise of due diligence. 43 C. L. J. 113 : 94 I. C. 907 : 1926 Cal. 1208 : 27 Cr. L. J. 715.

S. 72. (Service on servant of Govt. or Ry. Company)

—this sec. is intended to apply only to summons issued by a court of justice and not to orders of Police Officers investigating a crime under Chap. XIV of this Code. 40 I. C. 733 : 18 Cr. L. J. 733 (M.)

—summons to a Sub-Inspector of Railway Police should be served through the Superintendence of Railway Police of the District, 89 I. C. 421 : 6 Pat. L. T. 215 : 26 Cr. L. J. 965 : 19 25 Pat. 553.

S. 75 (Form of warrant of arrest.)

—a signature by stamp is not sufficient. 6 M. 396. but see, 5 C. W. N. 447, 8 A. 293.

—signature by initial does not vitiate the warrant, 3 P. L. J. 493, 8 A. 293, 5 C. W. N. 447, *contra*. 23 C. 896.

—warrant containing wrong description is not valid. 28 399 : 5 C. W. N. 413 and it must give description. 9 B. H. C. 18 B. 636.

S. 75. (Form of warrant of arrest).—contd.

—a seal of the court is essential. 19 C. W. N. 224; 42 C. 708; 16 Cr. L. J. 336, 18 B. 636.

—the warrant must be signed by the presiding officer of the court. 26, 2 P. L. J. 487.

—it can be cancelled only by the court. R. 103; 28 Cr. L. J. 326, 1927 Lah. 744.

—when a warrant has been cancelled it cannot be re-issued. 1 C. W. N. 150.

—when no form is prescribed by any act the form to be used is the ordinary one prescribed by this Act. 18 B. 636.

—a warrant issued by any other person is bad. 2 P. L. J. 487.

—the warrant must be executed within the time specified. 28 B. 129, 13 C. W. N. 1091.

—a person in the first instance unless there is strong likelihood of the charge being proved. 1908 P. W. R. 20

—a person obstructing a public servant in execution of a warrant of arrest bearing only the initial of the Magistrate which was not made known to the accused, cannot be prosecuted under s. 185 I. P. C., 23 C. 896.

—unless time is limited, a warrant remains valid until it is executed. 28 B. 129, 13 C. W. N. 1091.

—a warrant with an endorsement for bail to be taken for the appearance of the accused on a particular date does not lapse on the expiry of that date. Only the direction to take bail lapses, 13 C. W. N. 1091.

—a warrant of arrest remains in force until it is cancelled by the issuing court or until it is executed although it bears a returnable date. 1928 Pat. 466; 112 I. C. 223; 7 Pat. 478.

—warrant issued by the civil court to the bailiff making it returnable on certain date is legally executed within that date even if the Nazir fixes another shorter date within which it is not executed, 17 C. W. N. 941.

—the Magistrate should stay his hand when a rule is issued by the High Court. 2 C. W. N. 498, 5 C. W. N. 110, 19 M. 375.

—where a M. recalled warrants issued against the accused the Dt. M. had no jurisdiction to set aside the order of withdrawal of the warrants and to direct the warrants to be issued. The course open to him was to order further inquiry. 26 C. L. J. 114; 42 I. C. 729; 18 C. L. J. 1001.

S. 76. (Court may direct security to be taken)

—the Magistrate cannot issue a warrant for the appearance of a witness at an investigation by a Police Officer. 24 C. 320; 1 C. W. N. 154.

—the arrest of an accused on the 29th Oct, on a warrant issued with an endorsement for bail to be taken for his appearance on the

S. 76. Court may direct security to be taken—contd

26th Oct. is not illegal and the rescuing or escape of the accused is punishable under ss 224 and 225 I. P. C. 13 C. W. N. 1091

—a M. should issue a bailable warrant even in non-bailable cases, when the offence borders on the technical and the accused is a man of position and respectability. 1 M. W. N. 452.

S 77. (Warrant to whom directed).

—a warrant should not be issued to an unofficial unless the urgency is imminent. 5 B. L. R. 274; 13 W. R. Cr. 27, 8 W. R. 74

—under this sec. the name and designation of the Police Officer need not be inserted. C. W. N. 1918 (Pat) p. 269.

—a warrant addressed not to an officer by name but to the bailiff of the court is not illegal, 1914 M. W. N. 498, 25 I. C. 328, so also a warrant addressed in a Sub-Inspector without mentioning his name. 3 Pat. L. J. 493.

S 79. (Warrant directed to police officers).

—to make the warrant legal the endorsement must be by name, 4 C. W. N. 83. In the absence of such endorsement an officer other than that to whom it is addressed cannot lawfully make the arrest. 27 C. 457, 3 Pat. L. J. 493

—if the endorsement is initialed and if the initial is identified upon the evidence, it is all right 5 C. W. N. 447.

—an endorsement by a Court Head constable, on a warrant addressed to the Court-Inspector, in favour of peons who are not Police officers, is not legal. 27 C. 457; 4 C. W. N. 822.

—warrant addressed to a "bailiff of the court" but executed by naib nazir and process server without any endorsement by the bailiff, is bad. 59 I. C. 849; 22 C. L. J. 145; 3 L. L. J. 346.

—this sec does not apply to Forest Officers. 51 M. 873; 109 I. C. 365; 1928 Mad 624; 29 Cr. L. J. 541.

S 80. (Notification of substance of warrant)

—the section does not apply to arrest under section 56 Cr. P. C.; 27 C. 320; 4 C. W. N. 311.

—when substance is not notified obstruction to the warrant is no offence under s. 186 I. P. C. 23 C. 896, 10 C. 18, 37 C. 122, 13 B. 168 so even when warrant is shown to the accused. 26 C. 748, 3 C. W. N. 741, but if the Police Officer shows the warrant and gives the accused notice of it.

A. W. N. (1904) 229, 27 A. 258.

—the person against whom a warrant is issued is entitled to see that the person executing it has authority. 10 C. 18, 13 B. 168, 23 C. 896, 3 C. W. N. 741; 26 C. 748.

—it cannot be said that an arrest is legal without compliance with the provisions of s. 80 because a police officer may justify his action under s. 46 (2) Cr. P. C. 33 C. W. N. 284; 53 C. 831; 116 I. C. 723; 49 C. L. J. 264; 30 Cr. L. J. 703; 1929 Cal. 174.

S. 82. (When warrant may be executed).

—as to arrest on the lands of Hyderabad State Railway which is not British India for offence committed in British Territory, see. 25 C. 20 : 2 C. W. N. 1, 24 I. A. 137 P. C., 1 Lab. 406.

—so in the case of Residency of Jaypur. 7 Bom. L. R. 83, But see 48 I C 865, 31 P. R. 1918.

S. 83. (Warrant forwarded for execution outside jurdn.)

—this section applies to warrant issued under Act XIII of 1859, 20 A. 124, 20 M. 235, 457, 33 Punj. Rec 1898 P. 27, 1898, P. R. 11.

—the Political Agent of the Native State cannot be directed by the H. C. to produce a person in custody in the Native State as he is not in the vicarious custody. 119 I. C. 527 : 27 A. L. J. 520 : 1929 All 347.

S. 87. (Proclamation for person absconding)

—the officer who wants to serve the warrant must be examined as to measures he adopted to serve the warrant. 3 W. R. Cr. 63.

—the Magistrate must be satisfied that the accused is absconding or concealing which he must record. 6 W. R. Cr 73, 66 P. L. R. 1922 : 67 I C. 726 : 23 Cr. L. J. 454.

—a man who files a petition against the order issuing the warrant and takes steps to procure an order of a superior court that he should be allowed to remain on bail after such warrant has been issued, can neither be said to be absconding nor concealing himself. 67 I C. 726 : 23 Cr. L. J. 454.

—if the Magistrate considers that there is sufficient *prima-facie* proof of offence he can proceed under ss. 78 and 88 otherwise he should refuse to proceed 3 L. B. R. 116, 19 W. R. Cr. 12, 5 N. L. R. 125.

—the proclamation is illegal if it directs appearance within 30 days, it must not be less than 30 days from the date of publication of the proclamation. 9 C. W. N. 294 (note), 17 M. L. J. 438, 1919 P. R. 32, 19 M. 3.

—30 days should be counted from the date of publishing the proclamation in the accused's place of residence. 1917 P. R. 6, 19 M. 3, 19 W. R. 12.

—a validating order under s. 87 (3) which does not state that the proclamation has been duly published on a "specified day" is defective, the words "on a specified day" in s. 87 (3) being important. If the proclamation is published less than 30 days before the date fixed for appearance, subsequent proceedings are invalid. 128 P. L. R. 1920 : 54 I. C. 994 : 21 Cr. L. J. 210.

—if it is not published according to Cl. (a) it is not legal. 19 M. 3, 22 A. 216, 1904 A. W. N. 159, formalities prescribed by ss. 87 and 88 must be observed. 14 Bom. L. R. 163 : 14 I. C. 757.

—orders under ss. 87 and 88 may be passed simultaneously. 29 C. 417 : 6 C. W. N. 680.

—a warrant not being a "summons, notice or order" as mentioned in ss. 172 and 174 I. P. C. an offender against whom a warrant has

S. 87. (Proclamation for person absconding).—contd.

been issued, is not punishable under this section. 5 W. R. Cr. 71, Mad H C R 21 April, 9 W. R. Cr, 1866 70.

—a previous issue of warrant is a necessary condition. So if the court is not authorised to issue warrant he cannot issue proclamation or order of attachment. 1893 P R 15, 14 Bom L. R. 889.

the proclamation must be published according to sub-sec. (2)
court-house may be cured by s.

—if the procedure laid down in ss 87 and 88 has not been complied with, the irregularities can be covered by s. 537 Cr. P C But if s 537 be not applicable the attachment is not a valid one. 40 P. W. R. 1916; 36 I. C. 974.

—"abscond" does not necessarily imply change of place, it means to hide oneself. It does not apply to the commencement of concealment, but applies to continuing to do so after process is issued. 4 M 393

—one should not be too readily assumed to be an absconder without due inquiry and notice 2 Weir, 40.

—prosecution is to prove that the proclamation was duly made. 7 M. 436

—until the accused surrenders he shall be regarded as in contempt. 2 N. W. P. H. C R. 441, 5 W. R 71.

—where there is no endorsement or statement in writing of the court validating the proclamation it is not legal and the attachment and sale are invalid. 27 A. 572, 22 A. 216. It must specify the date of publication also. 1919 P. R. 32.

—court records must show that the formalities were strictly observed. 14 Bom. L. R 163, 14 I. C. 757.

S. 88. (Attachment of property of person absconding); Scope of amendments.

Sub-sec. (6A) to (6E) and some words in sub-sec. (7) have been newly added by the amendment to provide rules of procedure for the investigation and determination of claim, as in the C. P. Code.

—orders under ss. 87 and 88 may be passed simultaneously. 29 C. 417; 6 C. W. N. 680, 6 C. P. L. R. 38

—the undivided share of the absconding member of the joint family is attachable under this section. 39 M. 831, 1915 P. L. R. 28, 27 I. C 550, *contra* 2 P. L. W. 179; 42 I. C. 781, so also the share in the partnership business is attachable not by actual seizure but by prohibitory order. 5 B. L. R. 386, but no such share when in the hand of Receiver. 15 B. L. R. 382.

—attachment of joint family property was held to be illegal and disobedience to it by other members was held to be no offence. 2 Pet. L. W. 179; 42 I. C. 781, 2 Weir 43.

—property not belonging to the absconder cannot be attached. 7 W. R. 35.

—with regard to ancestral lands all that can be attached in proceedings under ss. 87 and 88 is the interest of the absconder and

**S. 88. (Attachment of property of person absconding)-
Scope of amendments.—*contd.***

on his death the lands must be released in favour of his heirs. 88 I. C. 460, 1925 Lah. 629; 7 Lab. L. J. 40; 26 Cr. L. J. 1148

—the Magistrate cannot inquire into the claims of the parties. 6 A. 487, the claimant should go to the civil court. 7 R. W. Cr. 35, 5 C. 540; 6 C. W. N. 175, 17 W. R. Cr. 10, 20 M. 88, 22 C. 953, but these rulings have become obsolete by the insertion of subsec. 6 A. 49, sec. 88.

—the sale shall be subject to the term of the lease already made, 1908 P. R. 9.

—a sale cannot be set aside for irregularity. 22 A. 216, 19 M. 3 *Contra*. 27 A. 572 But it can be set aside by the civil court. 1904 A. W. N. 159.

—only the Government can restore the property to the owner and not the Court. 18 W. R. Cr. 33, even not the H. C. 9 B. L. R. 349.

—a civil suit is maintainable for possession of the property attached and for mesne profits and damages. 28 C. 540.

—a subsequent attachment and sale in execution of money decrees by the civil court does not affect property at the hand of the Govt. 9 C. 861.

—but prior attachment of the civil court prevails. 116 I. C. 271; 31 Bom. L. R. 345; 1929 Bom. 200.

—by confiscation, title in the property is lost. 25 Bom. L. R. 228; 1923 Bom. 93.

—the order of the Magistrate refusing to release certain property from attachment is subject to the revisional power of the H. C. 76 I. C. 18.

—ss. 87 to 89 form a complete Code by themselves and the remedies provided therein are exclusive subject to the right of appeal or revision by the High Court. 111 I. C. 508; 1928 Lah. 562.

S. 89. (Restoration of attached property).

—the person must explain his absence. 6 W. R. Cr. 73, 3 W. R. Cr. 63.

—if the provision of sec. 87 Cr. P. C. has not been complied with in issuing the proclamation, it is invalid and the attachment and the penal consequences are all void. 19 M. 3, 22 A. 216, 1904 A. W. N. 159.

—where property comes at the disposal of the Government, no other attachment or sale subsequently held can confer any title. 9 C. 861; 12 C. L. R. 411.

—if third party claims, the Magistrate should stay the sale allowing the claimant to establish his right. 20 M. 88, 28 C. 540; 6 C. W. N. 175.

—s. 89 applies to a case where the validity of attachment proceedings is challenged, 39 P. R. 1917; 42 I. C. 593; 18 Cr. L. J. 979, 40 P. W. R. 1916 *not approved*, (22 A. 216, 27 A. 572, 14 Bom. L. R. 163, 19 M. 3 *Dist*)

S. 98. (Restoration of attached property).—contd.

—an application under s. 89 by an absconder for restoration cannot question the legality of the proclamation issued under s. (87) (a) 32 P. R. 1919: 54 I. C. 954: 21 Cr. L. J. 210, 22 A. 216, 19 M. 3 fol

—under s. 89 it is necessary that the "proof" that the accused person has not absconded should be offered or given within two years of the date of attachment. The adverbial phrase "within two years from the date of the attachment" qualifies not only the word "appears" but also the word "proves" which is connected with "appears" by "and." 15 Bom. L. R. 176: 19 I. C. 333: 14 Cr. L. J. 237.

—the property can be restored only when the applicant praying for restoration of property shows both that he had not absconded and that he had not the proper notice. 96 I. C. 977: 1926 Lah. 662: 27 Cr. L. J. 1025: 8 Lah. L. J. 608: 27 Punj. L. R. 825.

—not only the petition must be made but also the necessary facts must be proved within the period of two years. 96 I. C. 977: 1926 Lah. 662: 27 Cr. L. J. 1025

—if no application for restoration be made within two years the H. C. has no jurisdiction under s. 561 A. to order restoration. The proper remedy is an application to Govt. 82 Ind. C. 365: 26 Bom. L. R. 719, 1917 P. R. 6, 15 Bom. L. R. 175

—forfeiture should not be carried into effect until after a regular inquiry into the cause of the offender's absence. 3 W. R. 63.

—accused need not himself personally apply for the restoration of the property. The application can be made by any one on his behalf. 15 Bom. L. R. 175: 19 I. C. 333.

—where property has been sold and an application under the sec is allowed, the applicant can only get the net proceeds of the sale. 73 I. C. 269: 24 Cr. L. J. 573.

S. 90 (Issue of warrant in lieu of or in addition to summons).

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S. 91. (power to take bond for appearance).

—a bond by a mukhtear undertaking to produce a witness when called upon, is sufficient. 1901 A. W. N. 35.

—money deposited by surety cannot be attached for the realisation of fine imposed on the accused. 19 A. L. J. 887; 64 I. C. 136; 22 C. R. L. J. 744.

—sureties should not be rejected on mere Police report. 20 A. L. J. 780; 23 Cr. L. J. 498; 68 I. C. 35.

S. 92. (arrest on breach of bond for appearance).

—this sec. has reference only to the case of a person who is bound by a bond to appear in court. 38 M. 1088.

S. 93. (Summons to produce documents or other things).

—the document or the book must have a bearing upon and must be relevant to the case. 5 Bom. L. R. 980, 19 C. 52, 4 P. L. W. 65; 19 Cr. L. J. 217, 15 C. 109, 47 C. 647.

—the words "court" and "Magistrate" are convertible terms. 33 C. 953 P. C.

—the Magistrate should either issue a summons or a warrant—he cannot order Police to seize the books. 12 C. W. N. 1075, but he can issue search warrant. 47 C. 164.

—one cannot be prosecuted under s. 175 I. P. C. for not producing an incriminating document 12 C. W. N. 1016; 8 O. L. J. 320, 38 C. 304, *contra*. 37 C. 112, 15 C. 109, 19 C. 52, 41 C. 261. 37 M. 112.

—the Magistrate cannot take security for the production of a document. 7 C. W. N. 522, but he can do so after a search warrant has been issued 47 C. 164.

—the person required to produce a document need not be a party and he cannot refuse to produce the document saying that he has a lien on the property or that it is not to be used as evidence. 19 C. 52.

—the process or warrant can be enforced against the accused and on production the accused cannot insist prosecution to put it in evidence 15 C. 109, 5 Bom. L. R. 980, the M. can order for production in court. 5 Bom. L. R. 978.

—the document or thing must be clearly specified. 16 C. W. N. 1078, 41 C. 261.

—the M. has power to issue a search warrant under s. 96 to obtain document in possession of accused. 41 C. 261.

—the order for production must be made on sufficient materials. 47 C. 647; 24 C. W. N. 410; 31 C. L. J. 188.

—the accused in a murder case is entitled to a copy of statements made by witnesses at the inquest inquiry. 20 L. W. 745.

—a warrant should not be issued on a mere application of the complainant without satisfactory inquiry. 1917 M. W. N. 496; 41 C. 661, 6 A. L. J. 517; 9 I. C. 991.

—the complainant should be compelled to state on oath the grounds for search-warrant. 6 A. L. J. 517; 9 I. C. 991.

S. 96. (When search-warrant may be issued)

—every Magistrate has the power to issue search warrants, though the proceedings in connection with which search is made may not yet have instituted 16 C. W. N. 865; 16 C. L. J. 231 P. C. appeal from 13 C. W. N. 973 and 13 C. W. N. 458, 33 C. W. N. 369; 116 I. C. 721 49 C. L. J. 164; 30 Cr. L. J. 705; 1929 Cal. 176.

—but when there is no investigation inquiry or trial before the Magistrate he cannot issue search-warrant. 22 B. 949, 12 C. W. N. 1075, 24 C. W. N. 403.

—a general search of stolen property is not authorised, 16 C. W. N. 1078, 41 C. 261, 38 C. 304, 15 C. W. N. 343; 13 C. L. J. 639.

—search warrant must be for the production of some specified or distinct thing or object necessary for the inquiry. 15 C. 109, 16 C. W. N. 1078, 41 C. 261, 47 C. 597, 9 L. B. R. 45

—search can be made for a specific stolen property and not for stolen property generally. 17 C. W. N. 1209; 41 C. 251; 20 I. C. 129.

—the issue of search warrant on suspicion and the assurance given by the police that a general search is necessary is illegal 1929 Lah. 837; 1929 Cr. C. 565

—under this sec an accused can be called upon to produce
43 I. C. 793, 5 I. C. 17
N. 1016 Ref., but not when

—a search-warrant before any proceedings of any kind are initiated and in view of an inquiry about to be made. 24 C. W. N. 405, 31 C. L. J. 267, 39 C. 953 Ref.

—Magistrate is to decide whether the production of a particular thing is necessary. 8 W. R. Cr. 74; 9 L. B. R. 45; 10 Bur. L. T. 216, 5 Bom. L. R. 1032, 22 B. 949, 35 C. 1076. He should not wait until a preliminary inquiry is held or accused called upon to take his trial. 13 M. 18, 1910 M. W. N. 818; 8 M. L. T. 416.

—inspection of articles may be allowed to the complainant
N. 369; 49 C. L. J.

—the M. should weigh the circumstances
J. W. N. 405, 18 C.
C. 109.

—the M. should examine the complainant. 8 A. L. J. 517, the statement of the counsel for the prosecution is not sufficient information, 22 B. 949, opinion or report of the Police is not sufficient 47 C. 597; 24 C. W. N. 405, 47 C. 597; 31 C. L. J. 345; 24 C. W. N. 403, 39 C. 953 Dist.

—the M. should keep some record as to his action. 24 C. W. N. 405; 31 C. L. J. 267.

—a warrant can be issued for the search of stolen property or incriminating document in the possession of the accused. 41 C. 261, 37 C. 112, 15 C. 109, 19 C. 52, 41 C. 261, but see 12 C. W. N. 1016; C. L. J. 320, 38 C. 304.

S. 96. (When search-warrant may be issued).—contd.

—power of issuing search-warrant extends to the production of printing materials for the purpose of making an order under s. 10 of the Copyright Act 47 C. 164, it includes also the power to possession of the document or thing, 15 C. 109, Ratanlal 677, but inspection should be restricted by the M. 15 C. 109, 5 Bom. L. R. 980

—"Court" and "Magistrate" are convertible terms, to act as a court no proceeding should be initiated before the Magistrate. 39 C. 953 p 965 P. C. 36 C. 433 overruled.

—the M. can himself conduct the search, 39 C. 953 P. C.

—search warrant should be promptly issued, 22 C. W. N. 719, and seizure of account-book, without issuing summons under s. 94, or warrant under this sec. is illegal, 38 C. 68, 12 C. W. N. 1075.

—the M. can stay execution of a warrant conditionally 'on the execution of a bond to produce document 47 C. 164

—in taking action under s. 96 the court is authorised to go as far as is physically possible in that search 36 P. R. 1914, 27 I. C. 897: 16 Cr. L. J. 225.

—the words 'a person' in sec. 96 includes a person accused in the case above case.

S. 97. (Power to restrict warrant).

—the Magistrate has power to allow inspection, but such inspection should be limited to the books or portions of books relating to the subject matter under inquiry or trial, 15 C. 199.

S. 98. (search of suspected house).

—where the discovery of an excisable article in the possession of the accused is proved by direct evidence, any irregularity or illegality in the search can neither vitiate the trial nor affect the conviction 81 Ind. C. 615: 46 A. 86: 25 Cr. L. J. 967.

—s. 96 contemplates the existence of a judicial proceeding as condition precedent to the issue of a search-warrant, but s. 98 does not require such proceeding 35 C. 1076, 39 C. 953 P. C.

—the search of the house of an absconder for stolen property without a search-warrant is illegal 38 C. 304, contra. 42 A. 67.

—a search-warrant issued under this sec. can be endorsed over to any other Police Officer of similar rank for execution. 3 S. L. R. 56: 10 Cr. L. J. 3, 39 A. 60.

—non-examination of the inhabitants of the locality whose signatures appear on the list prepared by the Police at the time of the search in the case does not render the search itself illegal. If the list cannot be proved the contents of the list can be proved by other evidence. 22 I. C. 49: 28 Cr. L. J. 17: 127 Lah. 149.

S. 99 A.

—to justify forfeiture under s. 99 A. it is not necessary for the Govt. to satisfy the court that on the evidence produced a conviction could have been under s. 153 A. I. P. C. 29 Punj. L. R. 385: 9 Lah. W. N. 41: 111 I. C. 659: 1928 Lah. 245.

S. 99-D (Order of Special Bench setting aside forfeiture)

—when an application is made to the High Court under s. 99-B in respect of a document, the High Court is precluded by s. 99-D from considering any point other than the question whether in fact the matters in the document were seditious or not and come within the mischief claimed at by a. 124 A. When a series of books are published the whole series must be looked to, to determine whether the passages contained therein are seditious. 47 A. 298: 86 I. C. 55 1925 All. 195: 26 Cr. L. J. 679 F. B

—the explanation of s. 99 (d) is that when after hearing the application the P. C. is left in doubt it should set aside the order which may be said to be contrary to the ordinary practice in an appeal in a civil suit 49 A. 856: 1927 All 649, 112 I C, 26 F. B.

S 100 (Search for person wrongfully confined)

—when a search-warrant was issued upon father-in-law, on the complaint of son-in-law, to produce the daughter, the accused was held justified under s. 99 I C to obstruct the Police in executing it. 11 C. W. N. 836.

—it is immaterial what form is used for the search-warrant under s. 100, provided that the substance of it complies with the requirements of law 45 C 905 28 C. L J 304, 16 C W. N. 336, 39 C. 403, 17 C. W. N. 836 Dist.

—warrant can be issued under this sec. merely as an application of a complainant. 30 Cr. L. J. 175: 113 I. C 578.

—it is doubtful whether this sec. applies to the search for and custody of a boy alleged to have been given and adopted which is denied 29 C. L. J. 603: 52 I. C. 859: 24 C. W. N. 104.

S. 102. (Person in charge of closed place to allow search)

—the proviso under the Excise 31 C W N. 667. also in searches of searches under the Opium Act 4 L. B. R. 121.

S. 103. (Search to be made in presence of witnesses.)

Sub-cl 5 has been added making a person, who without reasonable cause, refuses or neglects to attend and witness a search, being called upon to do so by written order, punishable under s. 187 I. P. C.

—this section is applicable to searches made under s. 14 of the Opium Act but not to search under s. 15 100 I. C. 980: 1927 Rang. 170: 28 Cr. L J 372.

—the searching officer is to choose the witnesses 21 M. 83: 2 Weir 46, and it is obligatory on him. 4 L. B. R. 213.

—a search-witness is not liable to be prosecuted under s. 187 I. P. C. for refusing to sign the list. 26 M. 419 F. B. 1 Weir 136

—evidence discovered by a search does not become inadmissible for it was not conducted with the precaution designed by Legislature. 14 C. W. N. 1114, 18 C. W. N. 493.

S. 103. (Search to be made in presence of witnesses).—*confd.*

—prosecution is to summon and examine the search witnesses. 9 C. W. N. 438, 38 M. L. J. 27.

—as to the mode of making search, see 27 C. 692 : 4 C. W. N. 750.

—the person whose premises are searched need not be present. 46 C. L. J. 368 : 1928 Cal. 27 : 29 Cr. L. J. 49.

—witnesses are required for the proper conduct of the search. 4 L. B. R. 213, 3 L. B. R. 229, 4 Bur. L. T. 91 F. B., and to prevent planting of articles by the police. 5 Rang. 291 : 103 I. C. 557 : 1927 Rang. 241 : 28 Cr. L. J. 701

—person unconnected with the Govt. in any way should be called as witnesses. 3 L. B. R. 229 4 Bur. L. T. 91 F. B. 3 L. B. R. 4 L. B. R. 213, 12 Bur. L. T. 269, constantly calling the same witness is objectionable. 4 L. B. R. 121.

—the word "respectable" means respectable and "independent." 101 C. 796 : 4 Bur. L. T. 91 F. B. 23 Cr. L. J. 609 (Lab) 68 I. C. 833. respectable person would be impartial one 7 Bur. L. T. 143 : 15 Cr. L. J. 441 F. B.

—"inhabitants of the locality" means persons within easy reach and not of the same quarter 4 Bur. L. T. 222, 18 Cr. L. J. 1009, 7 Bur. L. T. 143, F. B. 12 Cr. L. J. 479, 8 C. 988

—stress must be given on the word "respectable" and not on "locality." 7 Bur. L. T. 143 F. B., 42 I. C. 753, failure to make inhabitants of the locality as witness does not make a search illegal 21 M. 83, 23 M. L. J. 445.

—where the occupants of the house were, after the discovery in their presence of a gun and after search of their persons, arrested and sent out of their room, and the search was continued, the exclusion of the occupants during the search was held not a technical but a substantial violation of the law. 41 C. 350.

—the word "occupant" means a person residing in or being in charge of the place. 41 C. 350

—Independent witness should be called to be present during the search. 1923 Lab. 79, 68 I. C. 838 : 23 Cr. L. J. 609

—the failure to call respectable inhabitants of the locality to witness a search does not render the search illegal specially when satisfactory explanation is furnished. The object of the legislature in requiring the presence of witness being to guard against possible chicanery and unfair dealing. 91 I. C. 249 : 27 Cr. L. J. 73.

—the object of the sec. is to obtain as reliable evidence as possible of the search and to avoid concoction. Under the circumstance of the case a Police Officer may be search witness 50 C. L. J. 518 : 1930 Cr. C. 1125.

—ground for search must be recorded under a 53 Excise Act and the search must be made in presence of two or more respectable inhabitants. 1929 Cr. C. 493 : 1929 All. 991.

—Where in an Excise case the Inspector of Excise who made the search was not examined, one of the witnesses was a friend of

S. 103. (Search to be made in presence of witnesses.)—*contd.*

the Sub-Inspector and lived at a distance of two miles and the other witness lived a mile away, the conviction could not be upheld as the search contravened the provisions of this section 86 I. C. 475 : 1925 Rang. 205 : 26 Cr. L. J. 827.

—a police officer authorised to investigate a charge of theft has a right to make a search which is incidental to his right to investigate. But if he ignores the provision of s. 103 in conducting the search offering resistance will not be punishable. 17 A. L. J. 1047 : 52 I. C. 663 : 42 A. 67.

—the statement of an attesting witness in the search-list that the accused lived in the house which was searched, but which he retracted at the trial, could not be taken as evidence of that fact. 11 M. L. T. 93 : 22 M. L. J. 270 36 M. 159 : 14 I. C. 418 (13 Cr. L. J. 114, 2 A. L. J. 444, 6 A. L. J. 184) *Appr*

—it is not proper to make additions to search-list though it does not invalidate the whole search 7 Bur. L. T. 163

—facts with reference to the search may be proved otherwise than by the production of the search-list. 34 M. 349 F. B. 7 M. L. T. 362 : 5 S. L. R. 31, 8 M. L. T. 451 8 I. C. 178 21 M. L. J. 281 F. A.

—irregularity in the search if not taken advantage of by the police, does not vitiate the search. 41 C. 350, 23 M. L. J. 445. 37 C. 467.

—irregularity in the search does not entitle a person to exercise the right of private defence. 19 M. 349, 37 A. 353 *Contra*. 42 A. 67.

—search witnesses are not bound to attend court. 38 M. L. J. 27 : 54 I. C. 241, 9 C. W. N. 438.

—the court has the discretion to require or not the attendance of the search witnesses. 46 C. L. J. 368.

S. 105 (Magistrate may direct search in his presence.)

—the D. M. is authorised to hold search. 16 C. W. N. 865 : 16 C. L. J. 231 P. C.

—a M. who is competent to issue search-warrant, can, instead of issuing such warrant, direct the search to be made in his presence. 36 C. 433 : 1884 A. W. N. 213.

S. 106. (Security for keeping the peace on conviction).

Amendment, scope of :—

The change in sub-section (1) has obviated the difficulty of deciding whether a particular offence was one involving a breach of the peace.

Sub-headings of notes.

- (1) Object of Chapter VIII.
- (2) Application of s. 106.
- (3) Procedure
- (4) Appeal.

S. 103. (Search to be made in presence of witnesses).—*contd.*

—prosecution is to summon and examine the search witnesses. 9 C. W. N. 438, 38 M. L. J. 27.

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—the statement of an attesting witness in the search-list that the accused lived in the house which was searched, but which he retracted at the trial, could not be taken as evidence of that fact. 11 M. L. T. 93 : 22 M. L. J. 270-36 M. 159 : 14 I. C. 418 (13 Cr. L. J. 114, 2 A. L. J. 444, 6 A. L. J. 184) *Appr.*

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—the D. M. is authorised to hold search. 16 C. W. N. 865 : 16 C L. J 231 P. C.

—a M. who is competent to issue search-warrant, can, instead of issuing such warrant, direct the search to be made in his presence 36 C. 433 : 1884 A. W. N. 213.

S. 106. (Security for keeping the peace on conviction).

Amendment, scope of :—

The charge in sub-section (1) has obviated the difficulty of deciding whether a particular offence was one involving a breach of the peace.

Sub-headings of notes.

- (1) Object of Chapter VIII.
- (2) Application of s. 105.
- (3) Procedure
- (4) Appeal.

(1) Object of Chapter VIII.

— the primary object of Chapter VIII is not the punishment of subjects for past unproved crimes but to prevent him from committing offences and to afford him an opportunity of reforming himself. 82 I. C. 154 : 25 Cr. L. J. 1226

— the object of Chapter VIII is practically served even when when an accused is on bail for a long time. 1924 S. 120 : 17 S. L. R. 160

(2) Application of the sec. 106

— the amendment has made an order under this section impossible where the only section under which the accused are convicted is a section of the Penal Code read with s. 149. 85 I. C. 42 : 1925 Pat. 117 : 26 Cr. L. J. 426 : 6 P. L. T. 330 : 3 Pat. 870.

— the word "involve" in s. 106 connotes the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence. To justify an order for security

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— "offences involving a breach of the peace" refer to offences in which breach of the peace is an ingredient and not to offences which merely provoke or are likely to lead to a breach of the peace. 30 C. 366. 29 M. 190. 81 Ind. C. 920. 26 M. 469. 35 C. 315. 2 Lah. 279. 30 C. 93. 47 M. 846 : 47 M. L. J. 232 81 I. C. 920.

— the words "other offences" are *ejusdem generis* with the offences against public tranquility and of assault mentioned therein, 81 Ind. C. 920 : 47 M. L. J. 232.

— to attract the operation of this section it is enough if the offence brought home to the accused necessarily includes or implies a breach of the peace. It is not necessary that apart from the offence there must have ensued a breach of the peace. Wrongful confinement does not *per se* involve a breach the peace but if the accused is found to have violently seized another person, tied his hands and wrongfully confined in an open garden, security can be ordered under this section. 47 M. 846 : 81 I. C. 920 : 1924 Mad. 808 : 25 Cr. L. J. 1066.

— an order under this sec. cannot be passed in the absence of a finding that there is a "breach of the peace." 81 Ind. C. 888. : 36.

trouble = persons appear to be very own under this sec. 81 Ind. C. 442. : 36.

— a Magistrate cannot bind the accused down merely on the ground that the parties were on bad terms. 49 A. 131 : 1927 All. 157 : 99 I. C. 120 : 28 C. L. J. 88.

— trespassing in a man's house for the purpose of causing him injury involves a breach of the peace and an order under this section is legal. 89 I. C. 1020 : 1925 Lab. 621 : 26 Cr. L. J. 1462.

(2) Application of the sec. 106.—*contd*

—the offence under s. 452 I. P. C. is not involving a breach of the peace and security cannot be demanded for keeping the peace under s. 106. 91 I. C. 139 : 1126 Lsh. 675 : 27 Cr. L. J. 571.

—the fact that the accused have been convicted of an offence involving a breach of the peace is not alone sufficient to pass an order under this section, the court must, as a condition precedent, show some ground for requiring the security. 97 I. C. 424 : 27 Cr. L. J. 1112 : 1927 Pat. 37.

—on conviction of theft no order can be made under this section. 1 C. W. N. 186, 6 C. W. N. 678, 25 C. 628 : 3 C. W. N. 18, 26 M. 469.

—where the facts found show that in committing the offence of which breach of the peace is not a necessary element the accused did act involving a breach of the peace, this section will apply 7 C. W. N. 25

—where the intention of the trespass was to commit a breach of the peace an order under this sec. was lawfully passed. 42 A. 345 but see 26 C. 576, 25 C. 628

—an order under this sec. cannot be passed against one convicted under s. 325 I. P. C. read with s. 149 I. P. C. 3 P. 870, 81 I. C. 888 : 25 Cr. L. J. 1064.

—where a person is convicted under s. 323 I. P. C. he cannot be bound down to keep the peace merely on the ground that the parties were on bad terms. There must be a further finding that a breach of the peace was involved in the occurrence. 89 I. C. 1225 : 23 A. L. J. 1053, 26 Cr. L. J. 1457 : 1926 All. 144, 47 A. 131 : 23 Cr. L. J. 88 : 1927 All. 157, 23 A. L. J. 1053.

—an offence under s. 323 I. P. C. does not come under s. 106 Cr. P. C. but an order can be passed under s. 106 after a conviction if it is found by the M. that the offence involved breach of the peace. 49 A. 131 : 1927 All. 157, 28 C. L. J. 88, 23 A. L. J. 1053 *Rel. on*.

—where there is a possible apprehension of future breach of the peace the section does not apply. 20 W. R. Cr. 57, 24 W. R. Cr. 10, 22 W. R. 9, 25 C. 628, 8 C. W. N. 517 35 C. 315, 2 Lah. 279.

—where the offence of riot is committed under such circumstances that it clearly implies the use of violence and a breach of the peace, this section applies. 35 C. W. N. 297.

—where the offence of riot is committed under such circumstances that it clearly implies the use of violence and a breach of the peace, this section applies. 35 C. W. N. 297.

—a complainant cannot be prosecuted against under this section. 27 C. 983 : 4 C. W. N. 795, 6 C. W. N. 471, nor the witnesses. 5 M. 380.

—the offence of unlawful assembly armed with arms is not a breach of the peace, though so breach is implied. 469, *Contra*. P. R. 1890 p. 6. meaning of this section 17 Cr.

(1) Object of Chapter VIII.

—the primary object of Chapter VIII is not the punishment of suspects for past unproved crimes but to prevent him from committing offences and to afford him an opportunity of reforming himself. 82 I. C. 154 : 25 Cr. L. J. 1226.

—the object of Chapter VIII is practically served even when when an accused is on bail for a long time. 1924 S. 120 : 17 S. L. R. 160

(2) Application of the sec. 106.

—the amendment has made an order under this section impossible where the only section under which the accused are convicted is a section of the Penal Code read with s. 149. 85 I. C. 42 ; 1925 Pat. 117 : 26 Cr. L. J. 426 : 6 P. L. T. 330 3 Pat. 870.

—the word "involve" in s. 106 connotes the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence. To justify an order for security there must be an express finding that the act committed involved a breach of the peace or an evident intention of committing the same or there must be clear evidence satisfying the Court that such was the case. 75 I. C. 983 : 1924 Nag. 118 : 25 Cr. L. J. 71.

—"offences involving a breach of the peace" refer to offences in which breach of the peace is an ingredient and not to offences which merely provoke or are likely to lead to a breach of the peace. 30 C. 366. 29 M. 190, 81 Ind. C. 920, 26 M. 469, 35 C. 315, 2 Lah. 279, 30 C. 93, 47 M. 846 : 47 M. L. J. 232 81 I. C. 920.

—the words "other offence" are *ejusdem generis* with the offences against public tranquility and of assault mentioned therein, 81 Ind. C. 920 : 47 M. L. J. 232.

—to attract the operation of this section it is enough if the offence brought home to the accused necessarily includes or implies a breach of the peace. It is not necessary that apart from the offence there must have ensued a breach of the peace. Wrongful confinement does not *per se* involve a breach of the peace but if the accused is found to have violently seized another person, tied his hands and wrongfully confined in an open garden, security can be ordered under this section. 47 M. 846 : 81 I. C. 920 : 1924 Mad. 808 : 25 Cr. L. J. 1066.

—an order under this sec. cannot be passed in the absence of a finding of breach of the peace. 81 Ind. C. 888

trouble.
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under this sec. 81 Ind

—a Magistrate cannot bind the accused down merely on the ground that the parties were on bad terms. 49 A. 131 : 1927 All. 157 : 99 I. C. 120 : 28 C. L. J. 88.

—trespassing in a man's house for the purpose of causing him injury involves a breach of the peace and an order under this section is legal. 89 I. C. 1020 : 1925 Lah. 621 : 26 Cr. L. J. 1462.

(2) Application of the sec. 106.—*contd.*

—the offence under s. 432 I. P. C. is not involving a breach of the peace and security cannot be demanded for keeping the peace under a 106. 91 I C 139; 1126 Lah 675; 27 Cr. L. J. 571.

—the fact that the accused have been convicted of an offence involving a breach of the peace is not alone sufficient to pass an order under this section, the court must, as a condition precedent, show some ground for requiring the security. 97 I. C 424; 27 Cr. L. J. 1112. 1927 Pat 37.

—on conviction of theft no order can be made under this section. 1 C. W. N. 186, 6 C W. N 678, 25 C. 628, 3 C. W. N. 18, 26 M 469.

—where the facts found show that in committing the offence of which breach of the peace is not a necessary element the accused did acts involving a breach of the peace, this section will apply 7 C. W. N 25

—where the intention of the trespass was to commit a breach of the peace an order under this sec was lawfully passed. 42 A. 345 but see 26 C 576, 25 C 628

—an order under this sec. cannot be passed against one convicted under s 325 I. P. C. read with s 149 I. P. C 3 P. 870, 81 I. C-888; 25 Cr. L. J. 1064.

—where a person is convicted under s 323 I. P. C. he cannot be bound down to keep the peace merely on the ground that the parties were on bad terms There must be a further finding that a breach of the peace was involved in the occurrence. 89 I. C. 1225; 23 A. L. J. 1053; 26 Cr. L. J. 1457; 1926 All. 144, 47 A. 131; 28 Cr. L. J. 88. 1927 All. 157, 23 A. L. J. 1053.

—an offence under s. 323 I. P. C. does not come under s. 106 Cr. P. C. but an order can be passed under s 106 after a conviction if it is found by the M. that the offence involved breach of the peace. 49 A 131; 1927 All. 157; 28 C. L. J. 88, 23 A. L. J. 1053 *Rel on.*

—where there is a possible apprehension of future breach of the peace the section does not apply. 20 W. R. Cr. 57, 24 W. R. Cr. 10, 22 W. R. 9, 25 C. 628, 8 C W. N 517, 35 C. 315, 2 Lah. 279.

—where the offence of hurt is committed under such circumstances that it clearly implies the use of violence and a breach of the peace e. g. assaulting a prosecution witness in a public place, the order for security is proper. 44 M. L. J 485

—in case of *bona fide* dispute about land or water, proceedings should be taken under s. 145 and not under this sec. 3 C. W. N. 297, 3 C. W. N. 463.

—a complainant cannot be prosecuted against under this section. 27 C. 983; 4 C. W. N. 795, 6 C. W. N 471, nor the witnesses. 5 M. 380.

—this section applies to a case of unlawful assembly armed and assembled to commit breach of the peace, though no breach is committed. 5 C. W. N. 250, 26 M 469, *Contra.* P. R. 1890 p. 6.

—*lathis* are arms within the meaning of this section 17 Cr. L. J. 313.

(1) Object of Chapter VIII.

—the primary object of Chapter VIII is not the punishment of suspects for past unproved crimes but to prevent him from committing offences and to afford him an opportunity of reforming himself. 82 I. C. 154. 25 Cr. L. J. 1226.

—the object of Chapter VIII is practically served even when when an accused is on bail for a long time. 1924 S. 120. 17 S. L. R. 160

(2) Application of the sec. 106.

—the word "involve" in s. 106 connotes the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence. To justify an order for security there must be an express finding that the act committed involved a breach of the peace or an evident intention of committing the same or there must be clear evidence satisfying the Court that such was the case. 75 I. C. 983; 1924 Nag 118; 25 Cr. L. J. 71.

—"offences involving a breach of the peace" refer to offences in which breach of the peace is an ingredient and not to offences which merely provoke or are likely to lead to a breach of the peace. 30 C. 366. 29 M. 190, 81 Ind. C. 920, 26 M. 469, 35 C. 315, 2 Lah. 279, 30 C. 93, 47 M. 846; 47 M. L. J. 232. 81 I. C. 920.

—the words "other offence" are *ejusdem generis* with the offences against public tranquility and of assault mentioned therein, 81 Ind. C. 920. 47 M. L. J. 232.

—to attract the operation of this section it is enough if the offence brought home to the accused necessarily includes or implies a breach of the peace. It is not necessary that apart from the offence there must have ensued a breach of the peace. Wrongful confinement does not *per se* involve a breach of the peace but if the accused is found to have violently seized another person, tied his hands and wrongfully confined in an open garden, security can be ordered under this section. 47 M. 846; 81 I. C. 920; 1924 Mad. 808; 25 Cr. L. J. 1066.

—an order under this sec. cannot be passed in the absence of a finding that there is a breach of the peace. 81 Ind. C. 588. 36.

—persons appear to be very
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own under this sec. 81 Ind. C. 442.

—a Magistrate cannot bind the accused down merely on the ground that the parties were on bad terms. 49 A. 131; 1927 All. 157; 99 I. C. 120; 28 C. L. J. 88.

—trespassing in a man's house for the purpose of causing him injury involves a breach of the peace and an order under this section is legal. 89 I. C. 1620; 1925 Lah. 621; 26 Cr. L. J. 1462.

(2) **Application of the sec. 106.—***contd.*

—the offence under s. 45 I. P. C is not involving a breach of the peace and security cannot be demanded for keeping the peace under s 106. 91 I C 139 : 1126 Lsh 675 : 27 Cr L J. 571.

— the fact that the accused have been convicted of an offence involving a breach of the peace is not alone sufficient to pass an order under this section, the court must, as a condition precedent, show some ground for requiring the security. 97 1. C 424, 27 Cr. L. J. 1112 1937 Pst. 37

—on conviction of theft no order can be made under this section. 1 C. W. N. 186, 6 C. W. N. 678, 25 C. 628; 3 C. W. N. 18, 26 M. 469.

—where the facts found show that in committing the offence of which breach of the peace is not a necessary element the accused did acts involving a breach of the peace, this section will apply
7 C W N. 25.

—where the intention of the trespass was to commit a breach of the peace an order under this sec was lawfully passed 42 A. 345 but see 26 C 576, 25 C 628

—an order under this sec cannot be passed against one convicted under a 325 I. P. C. read with s 149 I. P. O 3 P. 870 81 I. C. 888 : 25 Cr. L. J. 1064.

—where a person is convicted under s. 323 I. P. C. he cannot be bound down to keep the peace merely on the ground that the parties were on bad terms. There must be a further finding that a breach of the peace was involved in the occurrence. 89 I. C. 1225 : 23 A. L. J. 1053; 26 Cr. L. J. 1457; 1926 All. 114, 47 A. 131; 28 Cr. L. J. 88. 1927 All. 157. 23 A. L. J. 1053.

—an offence under s. 323 I. P. C. does not come under a. 106 Cr. P. C. but an order can be passed under a 106 after a conviction if it is found by the M. that the offence involved breach of the peace. 49 A. 131; 1927 All. 157; 28 C. L. J. 88, 23 A. L. J. 1153 *Rel. on.*

—where there is a possible apprehension of future breach of the peace the section does not apply. 20 W. R. Cr 57, 24 W. R. Cr. 10, 22 W. R. 9, 25 C. 628, 8 C. W. N 517, 35 C 315, 2 Lab. 279.

—where the offence of hurt is committed under such circumstances that it clearly implies the use of violence and a breach of the peace, or where the offender is a constable acting in a public place, the

nd or water, proceedings
his sec. 3 C. W. N. 297.

U. S. N. 453.

—a complainant cannot be prosecuted against under this section. 27 C. 983 - 4 C. W. N. 795, 6 C. W. N. 471, nor the witnesses. 5 M. 380.

—this section applies to a case of unlawful assembly armed and assembled to commit breach of the peace, though no breach is committed. 5 C. W. N. 250 26 M 459. *Contra*. P. R 1890 p. 6.

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—the amendment has made an order under this section impossible where the only section under which the accused are convicted is a section of the Penal Code read with s. 149. 85 I. C. 42 ; 1925 Pat. 117. 26 Cr. L. J. 426 : 6 P. L. T. 330 : 3 Pat. 870.

—the word "involve" in s. 106 connotes the inclusion not only of a necessary but also of a probable feature, circumstance, antecedent condition or consequence. To justify an order for security there must be an express finding that the act committed involved a breach of the peace or an evident intention of committing the same or there must be clear evidence satisfying the Court that such was the case. 75 I. C. 983 : 1924 Nag 118. 25 Cr. L. J. 71.

—"offences involving a breach of the peace" refer to offences in which breach of the peace is an ingredient and not to offences which merely provoke or are likely to lead to a breach of the peace. 30 C. 366, 29 M. 190, 81 Ind. C. 920, 26 M. 469, 35 C. 315, 2 Lab. 279, 30 C. 93, 47 M. 846 : 47 M. L. J. 232 : 81 I. C. 920.

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—an order under this sec. cannot be passed in the absence of a finding that there was a "breach of the peace". 81 Ind. C. 920

persons appear to be very
under this sec. 81 Ind.

—a Magistrate cannot bind the accused down merely on the ground that the parties were on bad terms. 49 A. 131 : 1927 All. 157 : 99 I. C. 120 : 28 C. L. J. 88.

—trespassing in a man's house for the purpose of causing him injury involves a breach of the peace and an order under this section is legal. 89 I. C. 1020 : 1925 Lab. 621 : 26 Cr. L. J. 1462.

(2) Application of the sec. 106.—*contd.*

—the offence under s. 452 I. P. C. is not involving a breach of the peace and security cannot be demanded for keeping the peace under s. 106. 91 I. C. 139 : 1126 Lab. 675 : 27 Cr. L. J. 571.

—the fact that the accused have been convicted of an offence involving a breach of the peace is not alone sufficient to pass an order under this section, the court must, as a condition precedent, show some ground for requiring the security. 97 I. C. 424, 27 Cr. L. J. 1112 1927 Pat. 37

—on conviction of theft no order can be made under this section. 1 C. W. N. 186, 6 C. W. N. 678, 25 C. 628 : 3 C. W. N. 18, 26 M. 469

—where the facts found show that in committing the offence of which breach of the peace is not a necessary element the accused did acts involving a breach of the peace, this section will apply 7 C. W. N. 25.

—where the intention of the trespass was to commit a breach of the peace an order under this sec. was lawfully passed 42 A. 345 but see 26 C. 576, 25 C. 628

—an order under this sec. cannot be passed against one convicted under s. 325 I. P. C. read with s. 149 I. P. C. 3 P. 870 81 I. C. 888 : 25 Cr. L. J. 1064

—where a person is convicted under s. 323 I. P. C. he cannot be bound down to keep the peace merely on the ground that the parties were on bad terms. There must be a further finding that a breach of the peace was involved in the occurrence. 89 I. C. 1225 : 23 A. L. J. 1053 : 26 Cr. L. J. 1457 : 1926 All. 144, 47 A. 131 : 28 Cr. L. J. 88 : 1927 All. 157, 23 A. L. J. 1053.

—an offence under s. 323 I. P. C. does not come under s. 106 Cr. P. C. but an order can be passed under s. 106 after a conviction if it is found by the M. that the offence involved breach of the peace. 49 A. 131 : 1927 All. 157 : 28 C. L. J. 88, 23 A. L. J. 1053 *Rel. on.*

—where there is a possible apprehension of future breach of the peace the section does not apply. 20 W. R. Cr. 57, 24 W. R. Cr. 10, 22 W. R. 9, 25 C. 628, 8 C. W. N. 517, 35 C. 315, 2 Lab. 279.

—where the offence of hurt is committed under such circumstances that it clearly implies the use of violence and a breach of the peace *e.g.* assaulting a prosecution witness in a public place, the order for security is proper. 44 M. L. J. 485

—in case of *bona fide* dispute about land or water, proceedings should be taken under s. 145 and not under this sec. 3 C. W. N. 297, 3 C. W. N. 463.

—a complainant cannot be prosecuted against under this section. 27 C. 983 : 4 C. W. N. 795, 6 C. W. N. 471, nor the witnesses. 5 M. 380.

—this section applies to a case of unlawful assembly armed and assembled to commit breach of the peace, though no breach is committed. 5 C. W. N. 250, 26 M. 469, *Contra.* P. R. 1890 p. 6.

—*athis* are arms within the meaning of this section. 17 L. J. 313.

(2) Application of the sec. 106.—*contd.*

—conviction under ss 143 and 379 I. P. C. is not a necessary ground for an order under this section. 6 C. W. N. 471; 30 C. 93, 11 C. W. N. 840, 26 C. 576, 8 C. W. N. 517, 27 C. 983, 33 C. 315, 43 C. 671; 20 C. W. N. 197, 23 C. L. J. 108, 29 M. 190.

(3) Procedure.

—to adopt proceedings under s. 106 without notice to parties is an incorrect procedure on general principles of justice. 97 I. C. 424; 27 Cr. L. J. 1112.

—when the offences of which a person is convicted do not in themselves and apart from any other incidents come within the terms of s. 106, it is incumbent upon the Magistrate to record a clear finding with respect to the facts making the provisions of this section applicable. 30 C. 93; 6 C. W. N. 471, 27 C. 983, 26 C. 576, 29 C. 393.

—where the findings of conviction under s. 143 I. P. C. do not show that acts committed necessarily involve a breach of the peace, order under this rule is bad. 20 C. W. N. 197.

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—an order under this sec. may be passed even in summary trial. 1886 A. W. N. 181, 3 N. W. P. H. C. R. 96, 7 O. C. 338.

—the accused, who was convicted for using more force than he was bound down under s. 106, should not be bound down under s. 107, 11 C. W. N. 1796.

—it was right to have the accused who has been convicted of rioting bound over for a period of one year. 1929 M. W. N. 583.

—in ordinary cases of conviction under s. 323 I. P. C. there is conviction for an offence involving a breach of the peace and whether security should be taken depends upon the circumstances determining its recovery. 51 A. 540; 30 Cr. L. J. 686, 1929 All. 349; 116 I. C. 789; 27 A. L. J. 340.

—to execute a bond to keep the peace must be passed at the same time when there is a conviction and passing of the sentence. No notice to show cause is necessary. 81 Ind. C. 613; 21 A. L. J. 839; 25 Cr. L. J. 965, 15 W. R. 56, N. W. P. H. C. R. 96.

—a Magistrate of the second or third class cannot after convicting the accused refer the case to a superior Magistrate for an order under s. 106. 21 C. 622, 36 P. R. 54, he should do so without passing any sentence himself. 35 C. 1093, 1901 P. R. 22, 21 C. 622, 1924 A. 141.

(4) Appeal.

—an appellate court has, in affirming the conviction, power to pass an order under this section even though the original court was not competent to do so. C. W. N. 1917 Pat 57 18 Cr L. J. 118, F. B. 37 M. 153, 30 M. 182, 43 A. 372, 33 A. 48, 33 B. 33, 2 P. L. J. 21, 97 I. C. 424; 27 Cr. L. J. 1112. 1927 Pat. 37, 109 I. C. 230, 30 Bom. L. R. 373 1928 Bom 124; 29 C. L. J. 502 19 N. L. R. 152 23 O. C. 380, 16 O. C. 281, 81 I. C. 145; 19 N. L. R. 154 *Contra* 35 C. 134, 19 Cr L. J. 220 (C), 24 Cr. L. J. 368 (C), 23 Cr. L. J. 457 (L), 1904 P. R. 21, 29 M. 190, 30 M. 48 *overruled by* 37 M. 153. But the recent amendments have rendered the latter rulings obsolete.

—in the absence of a finding that any breach of the peace occurred, an appellate court has no power to direct the accused to enter into a bond under s. 106 30 M. L. T. 348

—an appellate court after setting aside the sentence cannot demand security 22 P. R. 1901 Cr 1895 A. W. N. 141, 7 N. W. P. H. C. R. 375, 30 C. 101 6 C. W. N. 422

—the appellate court has the power to require security bonds after the judgment in appeal provided the appeal proceedings are not terminated by that time 109 I. C. 230 1928 Bom 134 30 Bom L. R. 373; 29 Cr. L. J. 502.

—order under s. 106 may be set aside on appeal while upholding the sentence 30 C. 101: 6 C. W. N. 422,

—on an appeal from an order of a second class Magistrate an appellate court cannot pass an order requiring security. 67 I. C. 729; 23 Cr. L. J. 457.

S. 107. (Security for keeping the peace in other cases), Amendments, scope of.

(1) The words "if in his opinion there is sufficient ground for proceeding" in cl. (1) have been added by the amendment to prevent the Magistrate from proceeding upon any and every information.

(2) The words "pending further action by himself under this Chapter" in cl. (4) have been substituted for the words "until the completion of the enquiry hereinafter prescribed" making the power of the Magistrate less wide.

Sub-headings of notes.

- (1) Scope of the section.
- (2) Grounds for order.
- (3). Jurisdiction.
- (4) Procedure.
- (5) Appeal and Revision.
1. Scope of the Sec.

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1. Scope of the Sec.—*contd.*

9 C. W. N. 551, 10 C. W. N. 288, 25 C. 537, 559, the general principle is that in case of land dispute one party should not be bound down leaving the other party free without deciding which party is in possession, 3 C. W. N. 297, 463, 7 C. W. N. 29, C. W. N. 1919 Pat. 93. In case of land dispute the M. can undoubtedly proceed under s. 145, but that will not preclude him from taking proceedings under this sec. In such cases he can exercise discretion. 32 C. 966, 39 C. 150 36 M. 315, 26 M. 471, 34 A. 449, 7 C. W. N. 746, 24 C. W. N. 1075, 2 Weir 50, 23 Cr. L. J. 123 (c), 23 Cr. L. J. 567 (Nag).

—A dispute about land justifying proceedings under s. 145 does not bar proceedings under this section. But if the complainant is out of possession of the land in dispute and there is no danger of a breach of the peace unless he attempts to resume possession he should be referred to his remedies under s. 145 or in the Civil Court. 68 I. C. 407; 23 Cr. L. J. 567, 5 N. L. R. 94 Rcf

—it is clear from the authorities that the provision of section 145 are mandatory while it is discretionary with the Magistrate to draw up proceedings under s. 107. When there is *bonafide* dispute regarding lands the proper course is to proceed under s. 145; otherwise the effect would be to bind down one of the parties only without any adjudication upon the question as to which of the two parties is in possession. But where one party is clearly in wrong and threatens another who is in actual possession of the lands, 145 has no application. 90 I. C. 442; 6 Pat. L. T. 766; 26 Cr. L. J. 1562; 1925 Pat. 610.

—an order under s. 144 Cr. P. C. prohibiting the holder of a market likely to cause breach of the peace is legal, and it cannot be said that the Magistrate's only course was to take proceeding under s. 107 Cr. P. C. 55 C. 1077; 32 C. W. N. 913. 47 C. L. J. 452; 1928 Cal. 446; 29 Cr. L. J. 423.

—the existence of enmity between persons or faction is no ground for proceeding under this sec. it must be established that a breach of the peace is imminent, 103 I. C. 517; 10 Lah. O. J. 72; 1928 Lah. 243; 29 Cr. L. J. 417; 9 Lah. W. N. 47. 10 Lah. L. J. 72; 110 I. C. 453; 1928 Lah. 863; 29 Cr. L. J. 714.

—where it is probable that the parties to a land dispute will break the King's peace before the Civil Court can give decision, that danger can be guarded against by an order under s. 107 in an appropriate case. 93 I. C. 62; 23 Bom. L. B. 488; 1926 Bom. 313.

—the fact of dispute concerning land likely to cause a breach of the peace does not deprive the Magistrate of his jurisdiction, under this section, his competence depends upon whether convictions specified in the section have been established as against person not in possession. 32 C. 150; 16 C. W. N. 83; 14 C. L. J. 429.

—proceedings under ss. 107 and 145 may go on concurrently: order under s. 107 does not deprive the Magistrate of his power to make orders under s. 145, 18 Cr. L. J. 129.

1. Scope of the Sec.—*confd.*

—but evidence having been taken under s. 145, a magistrate cannot pass an order under s. 107, 10 C. W. N. 170 (note)

—simultaneous orders under s. 107 and 144 cannot be passed. 7 C. W. N. 142

—in rival hat disputes s. 106 is proper section and not s. 144. 11 C. W. N. 1002, but the Magistrate may prove under s. 144 Cr. P. C. 32 C. W. N. 613

—where there is no apprehension of a breach of the peace or disturbance of the public tranquility, an order under this sec. cannot be passed merely on the vague apprehension. 1 M. W. N. 1912 p. 47.

—a magistrate cannot proceed under s. 107 upon facts and information which have already been the subject of an inquiry under that section 41 M. 246.

—the Magistrate should take action only on reliable and credible information. 6 A. 26, 132, 8 C. W. N. 180, 1903 P. L. R. 115, 24 Cr. L. J. 239 (C) 2 P. L. T. 669, 3 Lab. L. J. 480, 6 W. R. 93, 21 Cr. L. J. 560 (Nag) 1888 P. C. 21, 14 A. L. J. 430

—the act likely to cause a breach of the peace must be an impending one and not one likely to happen at some future time, 26 A. 190, 6 Bom. L. R. 663, 7 N. W. P. H. C. R. 233.

—where the evidence shows that the persons were likely to cause a breach of the peace during the last *Moharam*, it cannot be prosecuted that they were likely to do the same at the next festival. 1927 Pat. 231 103 I. O. 907; 28 Cr. L. J. 719.

—this section presupposes that the person sought to be put under a rule of bail is likely to commit a breach of the peace or disturb the public tranquility; where the evidence showed that the ~~persons were likely to cause a breach~~ during the last *Moharam* at they were likely to do security should not be

—s. 250 Cr. P. C. does not apply to a proceeding under s. 107 Cr. P. C. 49 O. A. 750; 102 I. C. 780; 28 Cr. L. J. 604; 1927 All. 531; 25 A. L. J. 493.

—where during a period of extremely strained communal feeling an accused had disturbed the peace that it was the Hindu's inherent right to pass with music before the mosques at all times and organised a movement and defied the authority it was a proper case under s. 107. 32 C. W. N. 477; 1928 Cal. 438, 47 C. L. J. 444; 111 I. C. 396 29 C. L. J. 844

—a District Magistrate cannot take cognizance of a case under s. 107 without issuing notice to show cause nor he can transfer such case under s. 192 Cr. P. C. He cannot also make over initiation of the proceedings to a Magistrate having no local jurisdiction. 41 M. 246.

—that there are various litigations between the parties and hence there is likelihood of the breach of the peace is no ground for proceeding under this section. 16 C. W. N. 143 (note), 14 A. L. J. 769, 17 Cr. L. J. 484.

1. Scope of the Sec.—*contd.*

—where there were old standing feuds between the parties or two branches of a family and the Magistrate finding no evidence against the masters discharged them but on the assumption that there was a likelihood of a breach of the peace ordered their servants to provide securities, the order was illegal and without jurisdiction. 37 I. C. 517: 23 A. L. J. 300: 1925 All. 443, 24 Cr. L. J. 230 (C).

—it is unfair to bind down the party in possession; proper order is to bind down both the parties under the section or to institute a proceeding under s. 145, 12 C. W. N. 606

—where both the parties put forward right which is in dispute only one party should not be bound thus giving advantage to the other. 1927 Pat. 314; 8 Pat. L. T. 645: 28 Cr. L. J. 605; 102 I. C. 781.

—but where the acts of one party is lawful and is provoked by the unlawful acts of the other party, security proceedings against both the parties are illegal. 1929 Mad 842: 118 I. C. 504: 30 Cr. L. J. 931: 1929 Cr. C. 610.

—an order that no rate should be collected from bat, till the decision of the rights of the parties by civil court, is bad. 9 C. W. N. 76 (note)

—putting in of a written statement or making a verbal statement is not 'showing' cause' but supporting of that statement by such evidence as the party may be able to produce 23 W. R. 9 Cr.

—servants should not be bound down leaving aside the master. 23 A. L. J. 300.

(2) Grounds for order.

—threats of violence are indication of the intention of breach of the peace. 31 C. 350, 27 A. 92, 21 Cr. L. J. 651 (C).

—the words "wrongful act" means an act forbidden or declared to be penal or wrongful by the criminal law. 21 Cr. L. J. 453 (Pat).

—acts in the exercise of lawful rights are not wrongful acts. 31 C. 935, 21 Cr. L. J. 651 (C), 12 W. R. 47, 18 A. L. J. 157, 22 C. W. N. 702, 9 C. W. N. 618, 14 M. L. J. 491, 3 C. W. N. 463, 16 A. L. J. 279, but where there are doubts as to the existence of the respective rights and obligations of the parties, both the parties should be bound down. 34 C. 935 20 Cr. L. J. 194 (Pat.)

—where the accused has not committed any overt act, the expression of opinion by some witness that there is an apprehension would be bound down, danger of breach of I. C. 858: 1926 Lah.

30 Cr. L. J. 2000

—it is unfair to bind down unless the acts are wrongful. A party having a right to load procession through a road along which they have a right, should not be bound down. 12 C. W. N. 703.

—some definite wrongful act is contemplated. 1911 P. W. R. 43: 1 A. L. J. 418, 1887 P. R. 64, 1838 P. R. 21.

S. 107. (2) Grounds for order. -contd.

—a hasty speech likely to break the peace does not justify an order against the speaker under s. 107 specially when all fear of breach of the peace passes away before the order. 7 Cr. L. J. 232

—when 2nd party obstructs the 1st party who are in the wrong, it is illegal to bind down the 2nd party. 9 C. W. N. 618.

—where the anticipated breach is to be committed by the other side, the only point to be seen is whether the act bringing about that breach is wrongful in itself. 97 I. C. 39 : 1926 Lah. 653 : 27 Cr. L. J. 1063 : 7 Lah. 482 : 27 Punj. L. R. 810, 32 A 576 fol.

—the fact that if one party exercises his rights in a lawful manner the opposite party will commit a breach of the peace is not a proper ground for demanding from the former security to keep the peace. 97 I. C. 358 : 27 Punj. L. R. 599 : 1926 Lah. 695 : 27 Cr. L. J. 1094 : 8 Lah. 98.

—opening a cattle market in the vicinity of ones already existing is not wrongful act. 16 A. L. J. 279

—granting lease of land not in the possession of the accused but to which he is entitled is not wrongful act. 25 C. 798.

—that the accused have prevented the services of village washerman or barber or that they have committed diverse other acts of oppression, is not ground for an order. 7 C. W. N. 32.

—a durputnidar resisting the purchaser at putni-sale of a putni taluk, is rightly bound down. 9 C. W. N. 792.

—singing in the street is not in itself a wrongful act. Punj. Rec. 1889 p. 1358, 3 C. W. N. 463.

(3) Jurisdiction.

—this section requires that unless the proceedings are started by the District Magistrate, both the person informed against and the place where the breach of the peace is apprehended shall be within the Magistrate's local jurisdiction. Where the place was within while the person informed against was not within the jurisdiction but the parties did not raise any objection of jurisdiction, it was a mere technicality which failed. 531 Cr. P. C. 97 I.

4 C. 344, 1 C. W.

—each of the peace is
—that, the fact that the
—Stats does not take
7 Cr. P. C. 67 I. C.
23.

the M. cannot be
11 C. 737, 23 B. 32.

The proper course is to cause information to be given to the M. within whose jurisdiction the person resides. 11 C. 737.

—residence is not identical with ownership, it means dwelling permanently or for a considerable time to have one's settled or usual abode, to live in or at a particular place. 15 C. W. N. 399, p. 401.

S. 107. (3) Jurisdiction.—*contd.*

—a non-resident zemindar cannot be hound down merely because his local agents are committing acts likely to cause breach of the peace. 10 C. L. R. 430.

—a District Magistrate cannot direct a sub-divisional Magistrate to draw up proceedings against person residing in another jurisdiction; he may do it himself. 13 C. W. N. 580.

to prevent a breach
against the petitioners
and he might then
ing. But he should
not direct proceedings to be drawn up by a Subordinate M. nor should the latter draw up proceedings merely because the District M. has ordered him to do so. He has full power to draw proceedings under s. 107 independently when he thinks it necessary. 72 I. C. 367; 24 Cr. L. J. 367. (c)

—a Magistrate can draw up proceedings under the sec. against a party even after issuing warning notices to the parties concerned. 1929 Cal. 506.

—after drawing up the proceeding the District Magistrate can call upon the party to show cause before the S. D. O. 21 C. W. N. 155 (note); 19 Cr. L. J. 496, 31 C. 350, 24 A. 151, 27 C. L. J. 314

—but the Dt. M. cannot make over a case to an incompetent M. 37 A. 20.

—a Magistrate at Head quarters can draw up a fresh proceeding in a case under this section, transferred to him by S. D. O. 29 C. 389; 6 C. W. N. 552, 24 A. 148

—a D. Magistrate has power under s. 528 Cr. P. C. to withdraw a case under this section. 8 C. 851.

—s. 107 does not empower a Magistrate to restrain a person from exercising lawful rights. 19 W. R. 47; 10 B. L. R. 441, 104 P. L. R. 1902 F. B., 7 A. 461

—if discharged under s. 119 no further inquiry can be ordered by the D. Magistrate or S. Judge. 12 P. L. R. 568, F. B. *contra*, 13 Bom. L. R. 505.

—a Magistrate to whom the case is transferred by another Magistrate may draw up fresh proceeding and may proceed against more accused. 19 Cr. L. J. 96; C. W. N. 1918 Pst. 12.

—the mere fact that dispute exists between two rival zemindars would not justify proceedings being taken against all their officers. 24 Cr. L. J. 230 (C.), 1922 Cal. 97, 87 I. C. 517; 1925 All. 443. On the other hand the fact that patwari threatened to use violence does not justify the M. to start proceedings against proprietor on the presumption of the latter having acquiesced in the action of the patwari 2 P. L. T. 669. But the master would be liable if he actually acquiesced in the servant's acts. 1 P. L. J. 361.

—only in the special circumstances referred to in clauses (3) and (4) the M. is empowered to detain a person against whom proceedings have been instituted under this s. 32 C. 80, 31 M. 315

S. 107. (3) Jurisdiction.—contd.

—when a person is arrested under cl. (3), unless there are special circumstances, he should be admitted on bail. 32 C. 80 *contra*. 36 M. 474

—a M. proceeding under this sec. cannot order attachment of property which is the subject of dispute. 77 I. C. 238 : 25 Cr. L. J. 350 : 1924 Oudh. 345.

—when proceedings have been instituted under this section, it is not in the special circumstances referred to in sub-secs. (3) and (4) that a person is detained in custody. 77 I. C. 857 : 24 Cr. L. J. 350

—a proceeding is bad if the accused be not informed of the particulars of the accusations against him and is based on indefinite informations from police. 77 I. C. 417. 2 Pat. L. J. 159 : 5 P. L. T. 353.

(4) Procedure.

—it is illegal to bind down a person with his consent without recording evidence. 35 C. 674. 8 C. L. J. 68. 12 C. W. N. 166 (note) 54 Ind. C. 781. 37 A. 30. 26 Ind. C. 653, 54 I. C. 411, 81 Ind. C. 196 L) *Contra*. 81 Ind. C. 238. 21 A. L. J. 881. 46 A. 109, 50 A. 599. 26 A. L. J. 312 : 1928 All. 270, 504, 120 : 1927 All. 579. 28 Cr. L. J. 609, when the accused says in terms that no prosecution evidence may be recorded and he is willing to give security the Magistrate need not record prosecution evidence. 102 I. C. 897 : 1927 All. 579 : 28 Cr. L. J. 609 : 25 A. L. J. 819 : 50 A. 120

—a person cannot be asked to furnish security merely because he stated that he had no objection to it. There must be some evidence to show an apprehension of a breach of the peace by acts on his part. 81 I. C. 198 : 25 Cr. L. J. 710 *Contra*. A court is perfectly justified to act upon a solemn consent given before it by the accused. 21 A. L. J. 881.

—s. 203 Cr. P. C. does not apply to applications under this section, but every Magistrate possesses inherent power to refuse an application which is groundless and if he is satisfied that apprehension of the breach of the peace does not exist, he can dismiss the application without taking any evidence. 76 I. C. 25 : 25 Cr. L. J. 89, 1924 Lab. 630.

—s. 247 Cr. P. C. does not apply to a proceeding under s. 107. 31 C. W. N. 388 : 45 C. L. J. 211 : 1927 Cal. 343 : 101 I. C. 607 : 28 Cr. L. J. 479, 27 C. 652, *Ref.*

—it is illegal to place a person on security merely on his stating that he has no objection to furnish it. 25 Cr. L. J. 710 : 81 I. C. 198, 24 P. R. 1015, 27 P. R. 1917, 35 C. 674 *fol.*

—under s. 117 (2) the enquiry in proceedings under s. 107 shall be like summons cases. 77 I. C. 828 : 25 Cr. L. J. 476, 1924 A. 695

—judgment must be based upon evidence relevant to the case. The M. should not rely upon the knowledge of certain facts which he obtains from sources outside the record. 14 A. L. J. 769.

S. 107. (4) Procedure.—*contd.*

—evidence of general repnte cannot be made use of in proceedings under this sec. 25 A 273, Pnnj Rec. 1888 p. 30; and no presumption to be drawn from previous bad character. 6 Bom. L. R. 663, 26 A. 190. F. B.

—the onus is on the prosecution to prove circumstances justifying the action of the Magistrate. 9 A 452, (1887) W. N. 111, 4 B. L. R. 46 F. B., N. W. P. H. C. R. 1887 p. 461, 8 C. W. N. 180, 11 Bom. L. R. 740.

—some specific acts must be proved 6 A. 132, 6 C. W. N. 717, 6 A. 26 F. B.

—facts must be proved against each person implicated. 8 C. W. N. 180, 12 C. W. N. 992, 6 A. 26 F. B., 38 A. 468, 21 Cr. L. J. 176 (A).

—overt acts must be proved before an order under s. 118 is passed. 9 A. 452, 19 W. R. Cr. 47, 2 W. R. Cr. 57, 22 W. R. Cr. 79, 24 W. R. 30, 10 C. W. N. 47 (note), 6 A. 214.

... proceeding under this sec. only reproducing its language
 ... erence to what matter
 ... he peace, cenot he sup-
 ... T. 639: 30 Cr. L. J. 492.
 ... separately tried; when both
 ... down there was misjoinder
 ... W. N. 180, 38 A. 468, 11 C. W.
 ... te), as to the principle of mis-

—the two opposing parties in a dispute cannot be proceeded
 ... L. T.

per-
 side,

... in trying jointly under
 ... to proceed against them
 ... form a gang. The case
 ... and this is not likely to be
 ... l; 81 I. C. 600: 25 Cr.

—In a proceeding under this sec. against a number of persons facts and figures must be given against each person showing how he deserves to be treated. 34 C. W. N. 144.

—joint trial of several accused who form a gang is legal. 69 I. C. 629; 23 Cr. L. J. 741; 1923 Nag. 53.

—where a number of persons have joined together to boycott a class of people, joint action against all is legal. 76 I. C. 228; 25 Cr. L. J. 132; 1924 Nag. 166.

—a Magistrate may issue summons upon the report of the
 ... ie report of the Subordinate
 ... C. R. Cr. 1, but those are
 ... rmine under s. 117. 5 Bom.
 ... C. Cl. 105.

S. 107. (4) Procedure.—*contd.*

—a defamatory statement in a complaint to a Magistrate is absolutely privileged. A defamatory statement in a petition to a Magistrate to take action under this section is also privileged as the petition initiates a proceeding and falls within the information contemplated by s. 107 (1). 49 M. 315, 93 I. C. 8; 1926 Mad. 521; 50 M. L. J. 460

—s. 247 Cr. P. C. (non appearance of complainant) does not apply. 1927 Cal. 107; 21 C. 607; 1927 Cal.

—a person and the P. Ws. accused under s. 117. Cal. 343 45 O. L. J. 211; 28 Cr. L. J. 479, 27 C. 662. *Ref.*

—witnesses are not necessary to support an Information before issuing summons. 11 W. R. Cr. 6.

—no bail should be taken before initiation of proceeding; in case of suspicion of absconding, personal recognizance may be taken. 11 O. W. N. 413, 36 M. 474

—only the Magistrate can detain in custody until the completion of the enquiry. he can do so only in the special circumstance under Cls. (3) and (4). 32 C. 80; 8 O. W. N. 779.

—s. 350 (1) provision (a) Cr. P. C. read along with s. 117 Cl. (2) applies to a case under s. 107. 1920 M. W. N. 260 F. B.

—persons against whom proceeding under this section is drawn. 13 O. W. N. 151, 23 C. 656, A. W. N. 1899 p. 203, 161, 43 M. 511 F. B. *Centra.* 260. 2 O. W. N. 129 229 32

—s. 545 Cr. P. C. cannot possibly apply to a case under s. 107 and an order directing the accused person to pay the costs of the complaint is *ultra vires*. 77 I. C. 828; 25 Cr. L. J. 76; 1924 All. 694.

—there is no provision for prevention of disturbance during 107 case, an order under s. 144 may be sufficient; appointment of special constables, because breach of peace is apprehended, is bad. 20 O. W. N. 855; 17 Cr. L. J. 197.

—it is inconvenient to transfer a preventive proceeding for trial from one District to another. 17 O. W. N. 326.

—in cases under ss. 107 and 110 the proceedings drawn up against the accused, correspond to the charge and give him notice of the case he has to meet. 41 O. L. J. 142.

S. 107. (4) Procedure.—*contd.*

—when a M. refuses to take action under this sec. a Sessions Judge has no jurisdiction to set aside the order and direct proceedings to be drawn up 81 Ind. C. 167 (C). 25 Cr. L. J. 679.

—a person against whom proceedings are taken under s. 107. has a right to demand that the witnesses or any of them may be summoned or reheard when second M. commences proceedings on the ceasing of the first 83 Ind. C. 340: 25 Cr. L. J. 1380 (O.)

—the depositions need not be read over to the witness in accused's presence. 52 C. 668: 89 I. C. 976: 1925 Cal. 940.

—where the preliminary order could not be served on a person as he was absent but it was read over to him in court when he appeared, the requirements of law were satisfied. 76 I. C. 228: 1924 Nag. 166: 25 Cr. L. J. 132.

—where in a case under s. 107 the preliminary order under s. 112 called on the accused to show-cause against giving security to keep the peace for one year and the order was subsequently made absolute under s. 118, the period for which security was to be given commenced from the date of the final order and not from the date of preliminary order. 1927 Mad. 542: 1927 M. W. N. 185: 51 M. 515: 106 I. C. 589: 29 Cr. L. J. 77.

(5) Appeal and Revision.

—where the lower Court grants a security offered in respect of the accused and the same is totally unwarranted the High Court may set aside the order. 48 C. L. J.

—an order under s. 107 directing security for good behaviour can be appealed against under s. 406 Cr. P. C. but no appeal lies against an order for security for keeping the peace under s. 107 read with s. 118 Cr. P. C. 19 N. L. R. 160.

—the High Court seldom interferes in the preliminary stage with the discretion of a Magistrate taking action under the preventive sections of the Cr. P. C. but when the materials on which the orders are passed are clearly insufficient to support the orders, the High Court will interfere. 38 C. L. J. 198: 28 C. W. N. 23.

—where the accused was absolved from giving security by the order of the Sub-Divisional Magistrate but the Dt. M. directed further inquiry, it was illegal, the Dt. M. should have referred the matter to the H. C. 46 A. 235: 77 I. C. 819: 46 A. 235: 25 Cr. L. J. 467: 1924 All. 592. So also where the M. dismissed an application the S. J. cannot direct the M. to draw up proceedings. 25 Cr. L. J. 679: 81 I. C. 167.

—a bound under s. 107 is not given to any particular person but to the court and any private party cannot take action in appeal. 77 I. C. 733, 2 Cr. L. J. 445: 1925 Cudh. 51.

—an order of a Magistrate refusing to take proceedings under this section cannot be set aside by a Session Judge in revision. 81 I. C. 167: 25 Cr. L. J. 679 (C).

S. 107. (5) Appeal and Revision.—*contd.*

—a District Magistrate has no power to set aside an order of the Subdivisional Magistrate under s. 107 or to direct the Subdivisional Magistrate to take proceedings under s. 145 Cr. P. C. It is open to the District Magistrate to refer the matter to the High Court. 73 I. C. 161. 1 Pat. L. R. 93: 24 Cr. L. J. 545, 75 I. C. 65, 24 Cr. L. J. 865.

S. 108 (Security for good behaviour from persons disseminating seditious matter.)

Amendments.

Besides minor amendments in other clauses the last clause has been amended in accordance with the recent amendments made in the Press and Registration of Books Act 1867.

Application of the sec.

—the test to apply this section is whether the person has been disseminating seditious matter and there is fear of the repetition of the offence. 11 Bom. L. R. 743.

—a speech which advocates the Home Rule in India and the attainment of it by constitutional means does not *per se* amount to disseminating seditious matter within the meaning of this sec. 19 Bom. L. R. 211: 18 Cr. L. J. 567, 34 C. 991.

—substance of a speech and not the exact words should be looked to, 34 C. 991: 11 C. W. N. 1050, 32 M. 2.

—formerly incriminating words were sufficient to justify an order under s. 103 Cl. (b), intention of the accused was not necessary as under s. 153A. I. P. C. 43 C. 591: 23 C. L. J. 105: 20 C. W. N. 199, *But this decision is no longer correct as the word "intentionally" has now been added in the sec. by the amendment.* Now s. 108 (b) must be read with s. 153 A. I. P. C. under which the offence of promoting class hatred is committed only if there is an intention in the accused to promote class-hatred. The use of the word "intentionally" in the later amendment to s. 108 (b) is intended for this purpose, 30 C. W. N. 953: 44 C. L. J. 172: 97 I. C. 738: 1926 Cal. 1133: 27 Cr. L. J. 1154: 54 C. 59.

—in proceeding under the sec. it must be shown that the accused was disseminating seditious matter. If it is shown that the accused was the author of a big libel, it is not necessary to prove the knowledge of the contents thereof. But in case of publishing his knowledge is presumed. 47 B. 438: 25 Bom. L. R. 97: 1923 Bom. 255.

—under s. 153 A does not require proof of intention, 1923 All. 344: 26 A. L. J.

—under s. 108 it must be proved that unless prevented the accused would continue to act in the way in which it had done. 1923 All. 344: 26 A. L. J. 813: 50 A. 854: 114 I. C. 48: 30 Cr. L. J. 216.

S. 109. (Security for good behaviour from vagrants and suspected persons).

Clause (a)

—the concealment referred to in cl (a) must be with a view to committing some offence. 39 C. 456 · 16 C. W. N. 499, 15 C. L. J. 396.

—s. 109 (a) should not be read as applying to any person who takes steps to conceal himself in the sense of concealing his presence in the way in which a criminal conceals his presence when he goes in the dark or by a deserted road or by some other secret means to commit a crime in his own neighbourhood. The passage "within the local limits of such Magistrate's jurisdiction" is part of the predicate to "conceal his presence" and the offence contemplated is that of a person probably, although not necessarily, coming from outside into the Magistrate's jurisdiction for some nefarious purpose and taking precaution to conceal his presence there. 97 I. C. 428 : 27 Cr. L. J. 116 : 49 A. 240 : 1927 All. 50 : 25 A. L. J. 94, followed in 1929 Cal 774 : 1929 Cr. C 519

—the accused may be arrested from a place outside the Magistrate's jurisdiction 31 C. 557, 26 M. 121 and the accused need not reside within Magistrate's jurisdiction. 2 Weir 53, but the accused cannot be called upon by a Magistrate to give an account of his presence in any other jurisdiction 39 C 456

—before a person can be ordered to execute a bond under s. 109 (a) it must be shown that he was taking precaution to conceal his presence within the local jurisdiction of the Magistrate and that such precautions were taken with a view to commit an offence. Merely showing a disinclination for the society of the police and endeavouring to avoid them by running away on their approach cannot be said to come within s. 109 (a). The clause must be applied with discretion and not to a person merely found talking at night time with bad character at a public place 97 I. C. 648 · 27 Cr. L. J. 1128 : 1926 Pat. 569 : 8 Pat. L. T. 95 : 6 Pat. 177.

—where the only evidence against the accused was that he was seen at 10 P. M. to come out of a sugarcane field by two persons who challenged him and ran away and was caught at the place, there was no offence under s. 109. 1928 All. 476 : F. B.

—where a person on being accosted by a Police Officer gives out a false name, it is a concealment of his identity, but not necessarily a concealment of his presence. 81 Ind. C. 598 : 21 A. L. J. 847 but giving false name with a view to commit crime comes within cl. (a). 15 Cr. L. J. 255 (C)

—an old offender attempting to conceal himself to avoid observations does not come within s. 109. 41 C. L. J. 142 : 86 I. C. 666 : 1925 Cal 616. (39 C 456 : 15 C. L. J. 396.) Ref.

—when a person who was accosted by a Police officer was unable to satisfy him that he was doing any work, or to provide him his whereabouts and was ordered to execute a bond for good

S. 109. Clause (a)—*contd.*

behaviour under s. 118 Cr. P. C. held that the order was not legal, *the Magistrate has to satisfy himself that the accused is taking*

ground for suspecting that he is sustaining himself by some dishonest means, for such an order can be made only where "it is necessary for keeping the peace or maintaining good behaviour" 53 C. 345; 30 C. W. N. 380; 43 C. L. J. 202; 93 I. C. 691 1926 Cal. 648.

—to support a proceeding under s. 109 (a) it is not necessary to show that the accused has followed continuous course of conduct in taking precaution to conceal his presence; nor is its application confined to cases where a person has not been brought under arrest 97 I. C. 648; 27 Cr. L. J. 1128; 1926 Pat. 569, *contra*, see the following cases.

—it refers to a continuous act and not to momentary effort of concealment, and it applies to the case of a person brought under arrest 22 C. W. N. 163; 18 Cr. L. J. 825; 27 C. L. J. 382, 41 C. L. J. 142, 50 C. L. J. 181; 1929 Cal. 729; 1929 Cr. C. 365.

—clause (a) refers to continuous act and not to a momentary effort at concealment to avoid detention or arrest. Precaution to conceal one's presence or identity with a view to commit an offence alone amounts to a continuous course of conduct 41 C. L. J. 142; 86 I. C. 666; 26 Cr. L. J. 842; 1925 Cal. 616, (27 C. L. J. 382; 22 C. W. N. 163) *fol.*

—action cannot be taken under this clause only where a
false name
was taking
similar case.

—if a man takes precaution to conceal his presence and that concealing is to be effected within the jurisdiction of the Mgt. who receives the information such Mgt. has power to demand security even though his residence is well known, the words "is taken" in cl. (a) cover "has taken" or "has been taking." 26 A. L. J. 1257; 50 A. 909; 113 I. C. 417; 1929 All. 33; 30 Cr. L. J. 145 F. B.

Clause (b)

—cl. (b) is divided into two parts; want of ostensible means of subsistence and inability to give satisfactory account of oneself. Either of these satisfies the order under s. 118. 41 C. L. J. 142.

—a Magistrate can take action under cl. (b) of the section whenever he has credible information that the accused (1) has no ostensible means of livelihood, or (2) is unable to give a satisfactory account of himself and is within the local limits of his j
1 C. 557, 6 A. L. J. 253, 13 Cr. L. J. 239 (C.)

S. 109. Clause (b)—*contd.*

—the mere fact a person has previous conviction, is not of itself sufficient reason for calling a man to give security under s. 109, 41 C. L. J. 142 : 5 C. W. N. 28.

—the expression "give a satisfactory account of himself" in s. 109 does not mean that the person should satisfy the M. how he spends his time, but means that he has to satisfactorily account for his presence within the limits of the Magistrate's jurisdiction. 41 C. L. J. 42

—the expression "satisfactory account" means satisfactory in accordance with the known facts that are consistent with the surrounding circumstance. 49 A. 844 : 102 I. C. 503 : 28 Cr. L. J. 567 : 1927 All. 592 : 25 A. L. J. 679

—the question of means of livelihood of the accused can be determined from a statement of facts and not from statements in the nature of an opinion of a witness. 41 C. L. J. 142.

—cl. (b) applies not only to vagabonds or vagrants but also to suspected persons of any class who cannot give satisfactory account of themselves. 13 Cr. L. J. 239 (C).

—a security bond in pursuance of an order binding a person under ss. 109 and 110 is not void. 92 I. C. 742 : 1926 Sind 180 : 27 Cr. L. J. 326.

—when the father is a man of means it cannot be said that the son has no ostensible means. 16 C. W. N. 499, 15 C. L. J. 396 : 39 C. 456

—ring game is a game of skill and that may be the ostensible means of living. 6 C. L. J. 708 : 40 C. 702 : 17 C. W. N. 883, *contra*. 15 Cr. L. J. 276, *see* 40 M. 556.

Procedura.

—a person cannot be called upon to render account of himself while he is outside the jurisdiction of the Magistrate taking proceeding. 16 C. W. N. 499 : 15 C. L. J. 396, 39 C. 456.

—the fact that a person does not work or that once before he had been convicted of bad livelihood, is not sufficient to convict him again without satisfactory evidence. 5 C. W. N. 28, 41 C. L. J. 142.

—so in case of expiration of the term of imprisonment in

8 C. W. N. 333.

—a person convicted under s. 411 I. P. C. for an act cannot under s. 109 Cr. P. C.

against each person
articles as indicates

except the police

S. 109. Procedure.—contd.

—accused's previous connection with a criminal conspiracy or his being in correspondence with criminals is not relevant under this sec though it may form the basis of a proceeding under s. 110. 39 C. 456

—an order passed more on suspicion than on any good ground of fact must be set aside. 17 A. L. J. 432.

—the accused must be given an opportunity to defend. 11 C 13

—the manner of arrest is not material. 7 C. W. N. 661 : 31 C 557, 26 M. 124.

—when a security has been accepted, the Magistrate has no
1 C. W. N. 394.

commit or abetment of any
s a breach of a bond taken

viour. So when a person is

convicted under s 452 the bond is liable to forfeiture. 1930 Lah. 227 : 120 I. C 605 1930 Cr. C. 240 : 31 Cr. L. J. 130.

S. 110. (Security for good behaviour from habitual offenders)**Amendments, Scope of—**

The sec. now applies to forger and to one who attempts to commit or abets the commission of the offence of kidnapping, abduction, extortion, cheating or mischief, or any offence punishable under Ch. XII or under ss 489 A. to 489 D. of the I. P. C.

Subheading of notes.

(1) Scope of the section.

(2) Applicability of the section.

(3) Applicability of ss. 107, 108, 109 and 110.

(4) Jurisdiction.

(5) Evidence.

(6) Procedure.

(7) Security and surety.

(8) Appeal and Revision.

(1) Scope of the section.

—the object of s. 110 is preventive and not punitive. The purpose which the Legislature had in view was to afford protection to the public against the repetition of crimes in which the safety of property is menaced and not the security of the person alone is jeopardised. 17 C. W. N. 238 : 16 C. L. J. 467 : 14 Cr. L. J. 5, 46 C. 215 : 23 C. W. N. 193, 2 A. 835.

—the preventive jurisdiction is a powerful means to secure the interests of the community from injury at the hands of hardened offenders of the most dangerous classes. This very fact, however, renders it necessary that the powers should be exercised with caution and discretion. 17 C. W. N. 238 : 16 C. L. J. 467.

S. 110. (1) Scope of the section.—*contd.*

—it being a preventive sec. action cannot be taken under it for having committed a specific offence 23 A. L. J. 10, 86 I. C. 282 : 26 Cr. L. J. 746.

—the provisions of this sec. should not be applied to a harbouring of dacoits as that is punishable under the specific sec. of the I. P. C. i.e., s. 216A. 1928 All 682 : 51A. 459 : 116 I. C. 804 : 30 Cr. L. J. 694, 1929 All. 813 : 27 A. L. J. 981 : 1929 Cr. C. 449 : 119 I. C. 571

—it is for the prevention of crime and not for the punishment of offence 4 C. W. N. 531, 17 C. W. N. 238 16 C. L. J. 467.

—this sec. desires to guard against the freedom of a dangerous man without security and not freedom entirely. 1929 All. 608. 30 Cr. L. J. 756 : 117 I. C. 346 : 1929 Cr. C. 174.

—it is wrong to use ss. 110, 117 and 118, so as to add to the punishment for past offences 10 B. 174.

—the greatest thief is entitled to a *locus penitentiae* and only when he is a habitual offender the severity of the law should be set against him 16 C. W. N. 90, 28 A. 306, 5 C. . .

—this sec. was enacted with the purpose of protecting society from having offenders, they were never intended to be applied to coerce landlords, however recalcitrant they may be, to adopt methods of management of their estate. 17 C. W. N. 238 : 16 C. L. J. 467.

—the object of this sec. is to afford protection to the members of the community from the effects of oppression. Strict relevance whether the evidence produced is sufficient to establish the offence. 1930 All. 37.

—it is a curb upon the activities of persons who set the ball of discord in motion and try to create or foment dissensions amongst men and men or amongst communities. 1930 All. 23.

—proceedings under this sec. must be *bonafide*. 17 C. W. N. 238.

—the powers under this sec. are not to be exercised very sparingly and in only those cases where the evidence is very clear and precise. 2 L. L. J. 237 : 56 I. C. 861 : 21 Cr. L. J. 557.

—mere suspicion is not sufficient to bind a man down to be of good behaviour under s. 110. The evidence ought to be of such nature as to lead to a reasonable and definite ground for concluding that the petitioner is a habitual offender. 75 I. C. 723 : 25 Cr. L. J. 35 : 1924 Pat. 498 : 5 Pat. L. T. 129.

—"you possess a bad reputation in the vicinity of your village," this much is not a proper notice under s. 110 and cannot be a basis of proceeding under this sec. 1929 All. 813 : 119 I. C. 571 : 27 A. L. J. 981 : 1929 Cr. C. 449.

(2) Applicability of the sec.

—"within the local limits of his jurisdiction" means residing within such local limits and not committing the offence enumerated. 5 C. W. N. 29 : 27 C. 993 *contra*, it does not apply to a person

S. 110. (2) Applicability of the sec.—*contd.*

residing within but means any person who is within such limits when the Magistrate takes action. 30 C. L. J. 173, 36 M. 96, 39 A. 139, *see* 23 C. W. N. 190, 23 C. W. N. 193; 46 C. 215, 43 C. 153; 19 C. W. N. 1022, 3 C. L. J. 195, 19 A. 291, 4 C. W. N. 84 (note), 36 Punj. Rec. 33 (27 C. 993) *not fol.*

—it also applies to a person undergoing sentence of imprisonment in a court of law or in a court of justice. 17 Cr. L. J. 88.

—without re-arrest under s. 55
“in particular” dacoity, is

the peace in Cl. (e) means
“peace is an ingredient and not
offences which may provoke or are likely to lead to a breach of
the peace. 30 C. 366, 15 C. W. N. 366, 38 C. 156, 25 C. 628; 3 C. W.
N. 18.

—to bring a case within this section a person must be found
who has abetted the
peace is an in-

Magistrate
132

his sec on his
f 29 C. 392; 6
nj Rec. 68, 2

it make s. 110

continuance
l. 254 (note).
amounting
performance

—no proceedings under s. 110 should be instituted or main-
tained where a previous proceeding had failed. 11 C. W. N. 129,
4 O. C. 317.

—dacoity not of its purview.
J 746: 1925 All. 250.

—acquittal of the accused charged with dacoity and under
s. 400 I. P. C. is not sufficient to be a bar to a proceeding under s.
110, 32 A. 55.

—evidence showing that the accused belonged to a gang of
persons associated for the purpose of habitually committing theft
or robbery proceedings under s. 110 Cr. P. C. could be sustained
against the accused even though the facts pointed to an offence under
s. 400 or 404 I. P. C., 1930 Cr. C. 442: 1930 All. 272: 1930 A. L. J.
389.

—previous proceeding against the accused standing in dis-
charge, he must be regarded as starting with a clean sheet
that date. 22 C. W. N. 60 (note).

S. 110. (2) Applicability of the sec.—contd.

—fresh proceeding should be confined to facts and circumstances alleged against the accused after release from his last security. 19 C. W. N. 223: 16 Cr. L. J. 312.

—where certain accused were undergoing imprisonment for other offences they were not "at large" within the meaning of s. 110 and they could not be proceeded against thereunder so long as they were not free. 100 I. C. 967: 1927 Pat. 126: 8 Pat. L. T. 335: 28 Cr. L. J. 359. (38 C. 156: 9 C. W. N. 898, *Ref.*)

—security for good behaviour with personal recognizance is illegal 27 A. 262.

—the term of imprisonment in default under this sec. should always be the same as the period for which the security is directed to be given. 23 A. 422.

—the amount of security to be furnished should be such as
with the order so as
2 C. 384, 16 B. 372,

the amount

in progress is an
16 Cr. L. J. 91.

—a bond executed under a mistake in the form of a bond under s. 107 is void and cannot be cured under s. 537, 38 Punj. Rec 78

—in a case of apprehension of breach of the peace, the Magistrate should proceed under s. 107 and not under this sec. 6 A. 132.

where a zeminder has been habitually shetting other people to commit offence involving a breach of the peace, in order to compel the ralyats to pay him enhanced rent, such abetment brings him within the scope of Cl. (e). 31 C. 419

—the power given by this sec. should be exercised with caution and discretion. 17 C. W. N. 238: 16 C. L. J. 467, 3 M. 238, 2 Lah. L. J. 237: 56 I. C. 861.

—it is very undesirable to proceed under this sec. against a person who is trying to reform himself and to live an honest life. 10 M. L. T. 333: 12 Cr. L. J. 328.

—this sec. should not be resorted to unnecessarily and to annoy individuals. 1898 P. R. 4.

—a man of desperate and dangerous character means a man who has reckless disregard of the safety of the person or the property of his neighbours. 46 C. 215: 23 C. W. N. 193: 28 C. L. J. 25.

—the mere fact that s. 108 may have been applicable, does not necessarily make a person liable.

Intended
for obtaining private vengeance under the aegis of a Crown prosecution. 15 C. W. N. 366: 38 C. 156 (31 C. 419, 30 C. 366) *Ref.*

S. 110. (3) Applicability of ss. 107, 108, 109 and 110.

—when the information set forth in the order of the Magistrate refers to apprehended breach of the peace, proceedings should be instituted under s. 107 and not under s. 110. 6 A. 132, 27 A. 92.

—in principle there is no distinction between the trials under s. 107 and trials under s. 110 and therefore in either case the Magistrate must hold an inquiry of the offence and not bind an accused person merely because he agrees to furnish security. 92 I. C. 882 : 27 Cr. L. J. 370. 1926 All. 614.

—after issuing a notice under s. 110 a Magistrate cannot proceed under sec. 107 without issuing a fresh notice. 30 M. 282, similarly after issuing a notice of showing cause under s. 107 he cannot direct the execution of a bond for good behaviour under s. 110. 25 C. 798.

—the mere fact that sec. 108 may apply does not necessarily make s. 110 inapplicable. 46 C. 215.

—during the continuance of an order under s. 109, no order under s. 110 can be passed as both the sections have the same object. 8 C. W. N. 543.

—a person cannot be bound down under both the ss. 109 and 110. 38 M. 555 556.

—preliminary order under s. 112 must be clear as to whether the accusation the accused has to meet is under s. 109 or 110. 11 C. 13.

(4) Jurisdiction.

—proceedings under Chapter VIII are inquiries and not trials. A person proceeded against under this Chapter is not "accused." 81 Ind. C. 909 : 27 C. W. N. 996.

—parties to proceeding under Ch. VIII Cr. P. C. are not accused. 50 C. 958. 39 C. L. J. 75 *Discussed*. in 41 C. L. J. 357 and 41 C. L. J. 479 F. B.

—in proceedings under s. 110 the Magistrate cannot remand an accused person to custody; sec. 117 Cr. P. C. applies to proceedings under Ch. XIV and not under s. 110. 39 M. 928.

—if a person has been arrested without jurisdiction for an offence within the jurisdiction and the charge of substantive offence fails, he can be proceeded against under this sec. 46 C. 215 : 23 C. W. N. 193 : 28 C. L. J. 25.

—where a person resided within the jurisdiction of a Magistrate and habitually committed theft and disposed of stolen properties and absconded and was brought back, but in the meantime he was convicted by another Magistrate in a proceeding initiated against him under s. 109, this fact does not oust the jurisdiction of the former Magistrate to take action under s. 110. 1929 Sind 166 : 1929 Cr. C. 335 : 30 Cr. L. J. 849 : 117 I. C. 777, 46 C. 215. *Ref.*

—where certain accused were undergoing imprisonment for other offences they were not "at large" within this section and could not be proceeded against thereunder so long as they were not free. 100 I. C. 967 : 28 Cr. L. J. 359 : 1927 Pat. 127 : 8 Pat. L. T. 335, (38 C. 156, 9 C. W. N. 898) *Ref.*

S. 110. (4) Jurisdiction.—*contd.*

—orders of Magistrates other than specified in the sec. are invalid and without jurisdiction. 17 Cr. L. J. 141 (A) ; 33 I. C. 317.

—the special power can be conferred by the Local Govt. only. Ratanlal 838, 22 C. 898.

—this sec. does not require that the accused should reside
It is sufficient that the
the time when proceedings
5, 19 C. W. N. 1022, 28 C.
93 Dist.

—the M. can take action against a person who happens to
be in jurisdiction as there is nothing in the sec. bearing

193 : 28 O. L. J. 25.

but the sentence need not be permanent. 23 C. W. N. 100,
89, 9 Bom. L. R. 244, 65 I. C.
L. J. 49, 39 A. 129, 43 C.
3, 23 B. 32, 1885 P. R. 43
L. J. 25.

proceedings under s. 110
outside his local jurisdiction.
O. 394.

it persons registered under
s. 4 of the Cr. Tribes Act are not illegal. 20 Cr. L. J. 30, 54 C. 279 : 44
O. L. J. 314 : 31 O. W. N. 165 : 28 Cr. L. J. 106 : 1927 Cal. 213, but
to support a sentence in such a case there must be evidence as to
the acts of the accused after his registration under the Criminal
Tribes Act. 54 C. 279 : 44 O. L. J. 314 : 31 O. W. N. 165, 99 I. C. 23 :
28 Cr. L. J. 106 : 1927 Cal. 213.

—order admitting bail on furnishing own recognizance for
Rs. 10,000 and security for the same amount was held to be oppres-
sive. 20 Bom. L. R. 121 : 19 Cr. L. J. 329.

—when a Magistrate has accepted the security the District
Magistrate cannot cancel the same. 6 C. W. N. 291 : 29 O. 445.

—the discharge order of a subordinate Magistrate can be
revised by the District Magistrate under s. 437. 26 A. 147 : 15 Cr.
L. J. 39.

—proceedings pending in one district cannot be transferred to
another district. 30 A. 47.

—the terms of s. 192 regarding transfer are wide enough to
embrace the proceeding under Ch. VII or XII. 28 C. 709 : 5 C. W.
N. 749, 22 C. 898, 31 O. 350, 12 C. W. N. 299, 4 C. W. N. 821, 24 A. 151.

S. 110, (4) Jurisdiction.—*contd.*

—the High Court has no power under s. 526 to transfer proceedings instituted under s. 110 or 145 Cr. P. C. 19 A. 291, it has such power under s. 15 Charter Act. 28 C. 709. 5 C. W. N. 749, 26 M 188, 25 B. 179, 16 Cr. L. J. 56.

—appeal from an order under s. 110 should not be disposed of without considering the evidence on the record and pleas of the appellant. 38 A. 393 20 Cr. L. J. 238.

—although it is difficult for the H. C. to interfere in revision in cases under s. 114 yet when a person is sentenced to imprisonment for failure to furnish security the H. C. may interfere for the interest of public security. 82 Ind. C. 36 : 22 A. L. J. 678

(5) Evidence.

—evidence required under s. 110 or s. 118 is not necessarily the evidence that the accused committed any definite offence but evidence sufficient to prove that he came within sub-sec. (a) to (f) of s. 110. 34 Punj Rec. 29 : 10 P. R. 1889 Cr. 3 M. 238.

—it cannot be said that the evidence which might form the basis of a charge of a substantive offence is to be excluded on the basis of an order of an order I. O. 362 : 1925

—enquiries made under Chapter VIII are governed by the ordinary rules of evidence and evidence which is not admissible under the Evl Act cannot be admitted in proceedings under s. 110, 101 I. C. 886 : 1927 All. 394.

—mere association is nothing unless it is to commit theft, dacoity, etc. 6 C. L. J. 711 ; 23 C. W. N. 488.

—evidence of acts falling within the scope of s. 110 but committed several years before the date of the institution of the proceeding thereunder, is admissible. 38 C. 156, 11 C. W. N. 789 *fol.*

—where other evidence has established association for habitually committing theft, evidence of previous conviction, whether or as evidence

mean "inclination" habit in that sense. 131 C. 104.

—the word "habit" implies a tendency or capacity resulting from the frequent repetition of the same acts. The words "habit" and "habitually" imply frequent practice or use ; they are used in the sense of depravity of character as evidenced by the frequent commission of the same acts in the section. 100 Cr. L. J. 359 : 6 Pat. 1. means repeatedly or

habitual commission C. W. N. 725.

S. 110. (4) Jurisdiction.—*contd.*

—orders of Magistrates other than specified in the sec. are invalid and without jurisdiction. 17 Cr. L. J. 141 (A); 33 I. C. 317.

—the special power can be conferred by the Local Govt. only. Ratanial 838, 22 C. 898.

—this sec. does not require that the accused should reside sufficient that the e when proceedings W. N. 1022, 28 C.

—the M. can take action against a person who happens to be within his jurisdiction as there is nothing in the sec. bearing upon the question of residence, 39 A. 129.

—a Magistrate can take action under this sec. only when the accused resides within his local jurisdiction. 3 C. L. J. 195, 1918 M. W. N. 751, 1901 P. R. 12 and he cannot issue warrant beyond

193 : 28 C. L. J. 25.

—but the residence need not be permanent. 23 C. W. N. 100, 30 C. L. J. 173, 36 M. 96, 14 Bom. L. R. 889, 9 Bom. L. R. 244, 65 I. C. 438 : 23 Cr. L. J. 86 : 1922 All. 86 : 20 A. L. J. 49, 39 A. 129, 43 C. 153, but it must be voluntary. 27 C. 993, 23 B. 32, 1885 P. R. 43 *contra*, 46 C. 215 : 23 C. W. N. 193 : 28 C. L. J. 25.

—a Magistrate cannot institute proceedings under s. 110 time outside his local jurisdiction. 111 I. C. 394.

—against persons registered under s. 4 of the Cr. Prisons Act are not illegal. 20 Cr. L. J. 30, 54 C. 279 : 44 C. L. J. 314 : 31 C. W. N. 165 : 28 Cr. L. J. 106 : 1927 Cal. 213, but to support a sentence in such a case there must be evidence as to the acts of the accused after his registration under the Criminal Tribes Act. 54 C. 279 : 44 C. L. J. 314 : 31 C. W. N. 165, 99 I. C. 234 : 28 Cr. L. J. 106 : 1927 Cal. 213.

—order admitting bail on furnishing own recognizance for Re. 10,000 and security for the same amount was held to be oppressive. 20 Bom. L. R. 121 : 19 Cr. L. J. 329.

—when a Magistrate has accepted the security the District Magistrate cannot cancel the same. 6 C. W. N. 291 : 29 C. 445.

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., 4 C. W. N. 821, 24 A. 151.

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—it cannot be said that the evidence which might form the basis of an order to be excluded
1. C. 362 1925

—enquiries made under Chapter VIII are governed by the ordinary rules of evidence and evidence which is not admissible under the Evl. Act cannot be admitted in proceedings under s. 110, 101 I. C. 886 : 1927 All. 394.

—mere association is nothing unless it is to commit theft, dacoity, etc. 6 C. L. J. 711, 23 C. W. N. 488.

—evidence of acts falling within the scope of s. 110 but committed several years before the date of the institution of the proceeding thereunder, is admissible. 38 C. 156, 11 C. W. N. 789 *fol.*

—where other evidence has established association for habitually committing theft, evidence of previous conviction, whether against property or for bad livelihood, is admissible not as evidence of character but of habit. 15 C. W. N. 461, 43 C. 1128.

—the word "habit" should not be restricted to mean "inclination by nature" and it would be difficult to prove habit in that sense. 75 I. C. 764.

—the word "habit" implies a tendency or capacity resulting from the frequent repetition of the same acts. The words "habit" and "habitually" imply frequent practice or use; they are used in the sense of depravity of character as evidenced by the frequent

mentioned in this section. 100
28 Cr. L. J. 359 : 6 Pat. 1.
(d) means repeatedly or

or habitual commission
20 C. W. N. 725.

S. 110, (5) Evidence.—*contd.*

—to prove habit evidence of acts of misconduct committed years ago is admissible but to institute a proceeding under s. 110 it must be supplemented by evidence of misconduct within a year. 11 C. W. N. 789

—"habit" is to be proved by an aggregate of acts and not of suspicions. 10 Lah. L. J. 317; 109 I. C. 510; 20 Cr. L. J. 574; 10 A. I. R. Cr. 355.

—the bound down under (c) unless they are
f commit or abetted
t the peace. 15 C.

—the fact that he should be
of such a nature as to show reasonable and definite ground for the conclusion that he is a habitual thief. 8 C. W. N. 543, 3 Bom. L. R. 269, 75 I. C. 723; 1924 Pat. 498; 25 Cr. L. J. 35; 5 Pat. L. T. 129.

—evidence of previous conviction is not substantive evidence, but merely for determining the lengths of time of conviction. 13 C. W. N. 318, 23 Cr. L. J. 507 and it is not evidence of character but of habit. 15 C. W. N. 461, and previous conviction is to be proved in a s. 110 case just in the same way as in other cases. 43 C. 1128; 20 C. W. N. 725.

—the fact that the person has been previously bound over
which
habitual
to such

offences
er and
justify
iso be
requent
29 All.

273; 116 I. C. 25.

—specific acts showing that the accused to the knowledge of some particular individual is by habit a thief or dacoit should be proved. 29 C. 779.

—overt or specific acts showing an intention to return to former course of life must be proved. 2 A. 835, 6 A. 132, 12 C. 520, 23 C. 621, 29 C. 779, 10 B. 174.

acts of

duties.

L. J. 88

mischiefs. 24 W. R. 37.

—a person cannot be bound down under this sec. for being addicted to acts of immorality in attendance

who commit
ence of their
129; 19 Cr.
P. R. 21 and
of his neighbours. 46 C. 215; 11 C. W. N. 789.

S. 110. (5) Evidence.—*contd.*

—the persons of bad character only do not fall under this sec. unless they are of desperate and dangerous character. 11 C. W. N. 129, 1892 P. R. 5, 5 C. W. N. 249, 17 Cr. L. J. 184 (Oudh), 16 Cr. L. J. 582 (A), 16 A. L. J. 776, 6 W. R. 6, 30 C. 366.

—merely saying that a person is a "bad character" is no evidence but when the witness continues to say that the person habitually commits theft his deposition is relevant. 51 A 275 : 1929 All. 650 : 1929 Cr. C. 346.

—being nuisance to neighbours and making indecent overtures to passers-by are not sufficient for proceeding under this sec 16 Cr. L. J. 582 : 30 L. C. 134.

—where immediately after an accused was acquitted of an offence under s. 411 I. P. C. an order was passed under s. 110 Cr. P. C. without any fresh grounds, held that the order must be set aside in revision. 91 I. C. 1006 : 27 Cr. L. J. 190 : 1926 Lah. 190.

—to establish a charge under s. 110 Cls (a) to (e) evidence of repute is admissible but to establish a charge under s. 110 Cl. (f) evidence of repute is not admissible. Mere belief and opinions without reference to acts or intentions which have induced the witness to form the opinion are not evidence of repute within s. 117 Cl. (f).
 regards ions cannot be
 43 C. 1 20 M. W. N. 398,
 1924 P 5 P. L. T. 166 :
 P. R. 12. 14 A. 45, 1881

—to prove the charge against the accused under s. 110 clauses (a) (i) and (f) evidence should not be vague, general and of hearsay character. 16 I. C. 274 : 6 Pat. L. T. 810 : 26 Cr. L. J. 738 : 1925 Pat. 131.

—evidence to prove the reputation of a person must be that
 ve
 W.
 l
 N.
 L.

—the witness must be in a position to know the general repute. 51 A 663 : 116 I. C. 25 : 1929 All 273 : 30 Cr. L. J. 562.

—evidence of general repute cannot override the findings of the civil court. 19 Cr. L. J. 835 : 47 I. C. 81, 25 P. R. 1884 Cr. fol.

—evidence of general repute is not admissible to prove a charge under Cl. (f). 62 I. C. 188 : 22 Cr. L. J. 492 : 13 Bur. L. T. 157, 47 I. C. 67.

—there should be no conviction on vague evidence of bad repute. 23 Bom. L. R. 57, 81 Ind. O 633 : 5 P. L. T. 166, 19 A. L. J. 39, 45 A. 109 : 1 A. L. J. 616, 23 C. 621, 1918 M. W. N. 751, 5 P. L. T. 166, 74 I. C. 536 : 24 Cr. L. J. 791, 1925 P. 131 : 86 I. C. 274, reputation should be that in the neighbourhood. 5 C. W. N. 29 : 27 C. 993, 11 C. W. N. 789, 101 I. C. 886 : 1927 All. 394.

S. 110, (5) Evidence.—*contd.*

—it is also reputation in the village where dacoities took place. 12 C.W.N. 299 : 35 C. 243, 17 C.W.N. 238 : 15 C.L.J. 467.

—mere suspicion is no evidence in cases of this kind 1927 All. 394 : 101 I. C. 886 : 25 A. L. J. 393, 104 I. C. 253 : 28 Cr. L. J. 813, 113 I. C. 909 : 30 Cr. L. J. 220.

—mere suspicion of complicity in this or that isolated offence is not evidence of general reputation. 29 Punj. L. R. 443 : 9 Lah. 586 : 29 Cr. L. J. 479 : 109 I. C. 127, 116 I. C. 801 : 1929 All. 599 : 1929 Cr. C. 174 : 27 A. L. J. 938 : 30 Cr. L. J. 693, 51 A. 663 : 116 I. C. 25 : 30 Cr. L. J. 562 : 27 A. L. J. 361, 1930 Cr. C. 393 : 1930 Lah. 345.

—evidence cannot be given that an accused person has been suspected of committing such and such offence as that sort of evidence is hearsay. But evidence of general repute is evidence of a definite fact and is in no sense hearsay evidence. 26 A. L. J. 519 : 1928 All. 357.

—mere suspicion is no evidence. 5 P. L. T. 129, 23 Cr. L. J. 507, 1905 A. W. N. 34, 31 O. C. 131 : 46 I. C. 841, 11 C. W. N. 129, 413, 12 A. L. J. 937, 11 A. L. J. 461, but that may be corroborative evidence when independent evidence of reputation has been given. 73 I. C. 352 : 24 Cr. L. J. 608.

—evidence of reputation is not admissible in cases coming within Cl. (f). 5 C. W. N. 239, 29 C. 779, 11 C. W. N. 789, 13 C. W. N. 244, 40 A. 372, 18 Cr. L. J. 119.

—under Chap. VIII mere hearsay evidence is not evidence of general repute. 1918 M. W. N. 751 : 47 I. C. 277 : 19 Cr. L. J. 905.

—mere suspicion is no evidence in cases of this kind. 101 I. C. 886 : 1927 All. 394.

—evidence of witnesses who have come forward to say that a person was suspected of having committed murder is not the class

purpose of binding him over : 28 Cr. L. J. 8

personal knowledge about the : 22 Cr. L. J. 314.

must be proved by relevant : 463.

is universal and there should : 1897 p. 3 : 2 P. R. 1897 Cr. 33,

40 I. W. N. 1044 : 44 I. C. 104, Punj. Rec. 1898 p. 4, 4 P. R. 1898 Cr., 81 Ind. C. 344 : 25 Cr. L. J. 808, 81 Ind. C. 633 : 5 P. L. T. 166, 76 I. C. 1034.

—evidence of association with bad characters must be with proved bad characters and not with reputed ones 13 C. W. N. 318.

—in gang robbery case under s. 401 I. P. C. when the character of the accused is not in issue, evidence of bad character or reputation is not admissible. 4 C. W. N. 97.

—order passed on hearsay evidence and evidence of accomplices only is bad. 66 I. C. 513 : 23 Cr. L. J. 289.

S. 110, (5) Evidence.—*contd.*

—the opinion given by the witness should be the opinion of considerable number of persons. 12 O. L. J. 413 : 1925 Oudh. 473.

—s. 30 Evl. Act is not applicable. 22 C. W. N. 405 : 20 Cr. L. J. 291 : 49 I. C. 649.

—the M. should not import his personal knowledges into a Judicial pronouncement. 45 A. 749, 2 O. W. N. 350, 81 Ind. C. 344 : 25 Cr. L. J. 808

—the M. cannot use the private information as evidence but he can utilise it to test the nature of evidences with which he has to deal. 81 Ind. C. 269 ; 45 A. 749, If the M. is influenced by private and confidential inquiries made by him the cases are vitiated. 21 A. L. J. 513 : 73 I. C. 337.

—statement of witnesses about their impression or suspicion must have sufficient reasons for it. 11 C. W. N. 413.

—police evidence should not influence the judgment of the Magistrate and where the evidence of the police consists of rumours and hearsay recorded in their diaries and note books it is wholly inadmissible. 43 M. 450, 22 Cr. L. J. 486 (C), I. P. L. T. 632, 13 A. L. J. 412 ; 28 I. C. 329.

—the evidence of the police officers that the person proceeded against is by habit a thief is only a matter of opinion and hearsay and is not admissible. 31 Cr. L. J. 165 : 120 I. C. 734

—the evidences of police officers though not of great evidentiary value cannot be altogether excluded from consideration. 26 A. L. J. 99 : 106 I. C. 684 : 1928 All. 1.

—a list of cases of suspicion only filed by the police is not admissible in evidence. 19 Cr. L. J. 825, 22 C. W. N. 148 (note).

—evidence of acts of extortion committed by a person, not

—when good evidence of respectable defence witnesses is
times a good
Cr. L. J. 142,
court should
nature of the
A. L. J. 1055,

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is accused in
(Oudh). 45 A.
13 A. L. J.

establish general
T. 632 : 55

I. C. 593

—entries in Thana Villeggs Crims Note Book are not in themselves evidence. 62 I. C. 182 : 22 Cr. L. J. 486

S. 110, (5) Evidence.—*contd.*

—when evidence of character is let in on both sides, the question is not whether the defence evidence outweighed the evidence of the prosecution, but whether accused has been proved to be a man of bad character. 58 I C 826 : 21 Cr L J. 826.

—where the evidence is equally balanced on both sides no order for security should be made under this sec. 11 A L J. 461 : 20 I. C. 231 : 14 Cr. L. J. 407, 10 A. L J. 383, 4 Lah L. J. 531, 20 Cr. L. J. 716, (A) 52 I. C. 796, 45 A. 109, because the burden of proof of bad character is on the prosecution. 1903 P. R. 27, 1898 P. R. 4. 27 C. 781, 11 A. L J. 461, 58 I. C. 826 : 21 Cr L J. 826

—it is the weight of the evidence and not the number of witnesses which the Court has to consider. 12 O. L J 413 : 1925 Oudh 473.

—an unnecessarily large number of witnesses should not be allowed to be examined by the prosecution as that amounts to a scandalous waste of public time and Magisterial energy. 45 A. 109. But the Magistrate is bound to examine all the witnesses produced by the accused. 22 C. W. N. 408, and time and opportunity should be given to the defence to produce witnesses cited by him. 38 C L J. 285, 15 Cr. L J. 353 : 41 C. 806.

Defence witness.

—the M. cannot limit the number of defence witnesses to that of witnesses on the prosecution 22 C. W. N. 408 : 49 I. C. 649.

—the accused should be given sufficient time and opportunity to give the list

—where
good behaviour
them produced and then only orders should be passed. 38 C. L. J. 285.

—a Magistrate's order to the accused to be ready with his defence witnesses on a certain day even before the prosecution had closed their case is improper. 1924 All. 320 : 25 Cr. L. J. 1003, 81 I. C. 715.

(6) Procedure.

—the police cannot arrest without warrant a person against whom security proceedings had been instituted. 89 I. C. 400 : 26 Cr. L. J. 1360 : 1925 Lah 623.

—the first order specifies the substance of the information received, it is intended to give the accused a precise idea of the charge. 86 I. C. 351 : 26 Cr. L. J. 767, 1925 S. 236, 89 I. C. 513 : 26 Cr. L. J. 1377.

—a M. influenced by the preliminary local investigation should not try a case under this sec., 4 Pat. L. J. 7 : 19 Cr. L. J. 899 : 47 I. C. 95.

—proceedings under s. 110 cannot be transferred to another Magistrate. 14 Bom. L. R. 713, 17 I. C. 60 : 13 Cr. L. J. 748, *contra* 1922 Pat 586 : I. P. 621.

S. 110, (6) Procedure.—*contd.*

—the Magistrate shall try it as warrant case 10 A. L. J. 383; 17 I. C. 404; 13 Cr. L. J. 773, 12 Cr. L. J. 98; 9 I. C. 468. *contra*, I P. R. 1916 Cr. 32 I. C. 676; 17 Cr. L. J. 84.

—time and opportunity should be given to the accused to produce the witnesses cited by him. 38 C. L. J. 285

—a person proceeded against under sec. 110 Cr. P. C. has no right to further cross-examine prosecution witnesses under s. 256 Cr. P. C. 23 Cr. L. J. 239; 99 I. C. 1039; 9 Lah. 265.

—where the accused has denied the guilt then his statement "I am prepared to give security for good behaviour" cannot be equivalent to a plea of guilty. 1928 All. 357; 26 A. L. J. 519; 9 A. I. Cr. R. 467.

—where proceedings are instituted under s. 110 the M cannot remand an accused person to custody 39 M. 928, 38 I. C. 963; 18 Cr. L. J. 403.

—a joint trial in a case where the evidence is in the nature of a common design is evidence in the nature of a common design. C. W. N. 334; 23 Cr. L. J. 377, 4 Cr. L. J. 100, 47 M. L. J. 689, 27 C. 78 I. C. 482; 23 Cr. L. J. 58 (C).

—trying a number of persons together is improper and should be confined to each person alone unless the case be that each of the accused was a confederate or partner with other persons to whom all the evidence would be equally applicable. 45 A. 109; 81 Ind. C. 600; 21 A. L. J. 841; 25 Cr. L. J. 652, 3 P. L. T. 338, 23 Cr. L. J. 58 (O), 4 L. L. J. 531, 20 A. 881, 1918 M. W. N. 751; 47 I. C. 277.

—joint trial of accused is bad when proceedings are taken against them not only for conduct coming within cls (d) and (e) but also cl. (f). 86 I. C. 49; 1925 M. W. N. 57; 47 M. L. J. 689; 26 Cr. L. J. 673.

—It is not permissible to take proceedings against several persons jointly. 26 Cr. L. J. 1114; 1925 Nag. 381; 88 I. C. 282

—joint notice to more than one person to show cause is not desirable. 51 A. 663; 30 Cr. L. J. 562; 1929 All. 273, 116 I. C. 25, 27 A. L. J. 361.

—proceedings under Chapter VIII are inquiries and not trials and the person proceeded against is not an "accused." 81 Ind. C. 909; 27 C. W. N. 996.

—the words "conviction" and "acquittal" are not applicable to proceeding under s. 110. 26 A. L. J. 519; 1928 All. 357; 9 A. I. Cr. R. 467.

—a person proceeded against under s. 110 cannot further cross-examine prosecution witness under sec. 256 Cr. P. C. 99 I. C. 1039; 1927 Lah. 470; 28 Cr. L. J. 239; 8 Lah. 265.

—a person proceeded against under s. 110 cannot further cross-examine prosecution witness under sec. 256 Cr. P. C. 99 I. C. 1039; 1927 Lah. 470; 28 Cr. L. J. 239; 8 Lah. 265.

necessary source of A. 172, but 4, and the W. R.

S. 110. (6) Procedure.—*could*

—a bond under ss. 112 and 115 is one bond for one amount and is discharged on forfeiture by the payment of the amount due by either the principal or the surety. The amount of the bond cannot be recovered both from the principal and from the surety. 51 Ind. C. 955; 4 L. 462, 25 Cr. L. J. 113.

—the provision of law requiring sureties for the bond is made not with a view to obtain money for the Crown by the forfeiture of recognizances, but to ensure that a particular person should be of good behaviour. 20 A. 206, 10 B. 174, 6 C. 951.

—an order under this sec. cannot be made against an accused person who has been imprisoned for failure to furnish security under this sec. without giving him time to retrieve. 32 L. C. 677; U. B. R. (1915) 3rd qr. 86, 31 C. 723, 43 C. 1128, 28 A. 806, 10 B. 174, 18 Cr. L. J. 710, but if upon being set at liberty he returns to his former life a further order under this sec. may be passed. 6 W. R. 18.

—accused persons should be given some chance of reforming their characters and they should not be prosecuted under sec. 110 soon after they have emerged from jail. 20 C. W. N. 723; 33 L. C. 525.

(7) Security and surety

—the period for which a person is bound over to be of good behaviour begins from the date of order. 24 Cr. L. J. 588 73 L. C. 332.

—a Magistrate has no authority to reject sureties merely upon an unfavourable report of the police. 15 O. C. 263, 17 L. C. 72; 15 Cr. L. J. 760, 68 L. C. 35; 23 Cr. L. J. 499 20 A. L. J. 760.

—the provision of law regarding sureties for the bond is made not with a view to obtain money for the Crown by the forfeiture of recognizances, but to ensure that a particular person should be of good behaviour.

—a person who is bound over to be of good behaviour in a particular manner and he is bound to be of good behaviour in that manner especially when he is bound over to be of good behaviour in that manner. 1913; 21 L. C. 115.

—leaving at 4 miles from the accused and looking like a boy was no good ground for rejecting a surety. 24 O. C. 292.

—living at a distance of nine miles is also no ground for rejecting surety. 19 L. C. 310.

—living at a distance is no ground for rejecting surety. 15 A. L. J. 545; 42 L. C. 788, 67 L. C. 585, 23 Cr. L. J. 585, 8 A. L. J. 785; 11 L. C. 1008.

—a M. cannot lay down any limits within which the sureties must reside. 67 L. C. 352, 23 Cr. L. J. 400; 1922 All. 4; 9.

—helping in defence is no qualification of surety. 16 A. L. J. 263; 44 L. C. 263; 19 Cr. L. J. 411, 39 L. C. 134.

—being a friend or in good terms with the accused or being named as a defence witness is no disqualification. 39 L. C. 134; 22 Cr. L. J. 22.

—conviction for an offence of assault is no disqualification to stand surety. 22 Cr. L. J. 453; 62 L. C. 179.

S. 110, (7) Security and surety.—contd.

—the M. may call for Police report as to the character of the surety 8 A. L. J. 785, 11 I. C. 1008

—requiring sureties to be respectable holders of landed property is an illegal order. 8 Bur. L. T. 53; 29 I. C. 825.

—sureties offered should not be refused except after judicial inquiry. 42 C. 706, 19 C. W. N. 220; 28 I. C. 663, 24 C. L. J. 51; 20 C. W. N. 1133; 43 C. 1024, 6 P. R. 1914; 16 Cr. L. J. 337.

—sureties need not have control over the accused. 43 C. 1024; 24 C. L. J. 51, 20 C. W. N. 1133, 3 C. L. J. 575, 10 C. W. N. 1077, 42 C. 706, 37 C. 91 *fol* 16 Bom. L. R. 138 *Ref*.

—it is serious mistake in the bond to make each of the sureties liable for the full penalty of the bond. 13 Cr. L. J. 62; 13 I. C. 398, 4 Bur. L. J. 270.

—when convicting an accused person the M. makes no reference to any forfeiture of security-bond, he cannot subsequently take such steps 6 P. W. R. 1915 Cr. 95 P. L. R. 1915; 27 I. C. 754.

—imprisonment awarded in default of furnishing security should, in ordinary cases, be simple 43 A. 563; 18 A. L. J. 640.

—security for good behaviour can, at the longest, be demanded for only one year except in very bad cases. Security for two years

11. C. are obtained. 19 Cr. L. J. 614; 30 I. C. 408

(B) Appeal and Revision.

—ordinarily a court of appeal in a summary trial is not bound to write a judgment but an appeal from an order requiring a person to furnish security to be of good behaviour is different. The Dt. M. should write a judgment showing that he has considered the whole case. 38 A. 393, 35 I. C. 485; 17 Cr. L. J. 309, 31 Cr. L. J. 9, 13 I. C. 102.

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the fact that he had
14 A. L. J. 279:

—no appeal lies to the District Magistrate against an order of a Magistrate under a. 110 Cr. P. C. after the record has been submitted to the Sessions Judge under sec. 123 (2). 28 Cr. L. J. 657; 103 I. C. 193; 1923 Lsh. 189.

—the cases in which the H. C. can interfere in revision on question of fact are rare. At the same time, the administration of the sec. has to be very carefully watched and where evidence has been misunderstood or ignored, difficulties have not been seen or the rules of evidence have not been followed, and the S. J. has reviewed the case in a very perfunctory way, without noticing the palpable defects in the evidence, the case requires to be carefully scrutinized. 19 A. L. J. 668; 63 I. C. 452; 20 Cr. L. J. 860, 17 Cr. L. J. 461, 36 I. C. 141, 22 A. L. J. 678; 82 I. C. 36, 12 O. L. J. 413; 1925 Oudh 473, 1927 All. 473; 102 I. C. 211; 28 Cr. L. J. 515.

S. 112, Order and substance of the information should be written.—*contd.*

—a notice to show cause must contain particulars of the charge setting forth the information he had received. Mere statement in such a notice that a man is a habitual thief or robber is not sufficient. The failure to record particulars in a notice under s. 112 is not a mere irregularity to be cured by s 537, Cr. P. C. 24 A. L. J. 908 : 1926 All 759 49 A. 5 : 99 I. C. 41 : 23 Cr. L. J. 9, 47 M. L. J. 689.

—notice under section 112 must contain full details so as to enable accused to be prepared for defence. 86 I. C. 49 : 1925 M. W. N. 57 1925 Mad 189 : 26 Cr. L. J. 673.

—the mere failure to incorporate the substance of the information in the notice under this section does not render the substance however amounts to a grave error renders it necessary for Courts the proceedings carefully and can prejudiced in the slightest degree the order must be set aside. 89 I. C. 710 : 26 Cr. L. J. 1398.

—where it was not clear that the accused was aware whether he had to meet a case under s. 109 or 110 Cr. P. C. an order requiring security was bad. 11 C. 13.

See other cases on this point under s. 114.

—no conviction can be imposed on the bail-bond. 11 C. W. N. 121, 12 W. R. Cr. 37, but see 20 A. 206, 24 A. 471.

—the surety should not be resident of a particular place, it is sufficient if he exercises a proper influence upon the person bound down. 8 A. L. J. 785.

—a Magistrate cannot refuse a surety because he lives at a distance or that he is unfit to control the accused, 4 C. W. N. 797, 6 C. W. N. 593, 17 C. W. N. 120 (note), 15 Cr. L. J. 268

—whether surety would be able to control the accused is in every case a question of discretion and under the circumstances of each case to be decided whether it is a proper and reasonable order. 21 C. W. N. 925

—no order for security can be given for a longer period than the terms mentioned in the summons. 26 M. 471.

—the substance should be stated. 15 W. R. Cr. 43, 20 W. R. Cr. 36, 8 C. 724.

—where certain persons are named as sureties the order under s. 112 is valid and the

security and bond are not void under s. 112 Cr. P. C. the proceedings were not vitiated. 1927 Lah. 689 : 104 I. C. 255 : 28 Cr. L. J. 815

—principle upon which terms are to be fixed. 6 C. 214.

—character and class of surety cannot be subsequently changed. 25 W. R. 50, 21 W. R. Cr. 6, 25 C. 798

—the bond contemplated by ss 112 and 118 is one bond for one amount and is discharged, on forfeiture, by the payment of the amount due by either the principal or the surety. 84 Ind. C. 545 : 5 L. 448.

S. 113. procedure in respect of persons present in court.

—even if persons are brought into court by illegal arrest, the Magistrate may initiate proceedings. 12 Cr. L. J. 533 (B).

—passing of an entirely fresh order on the date of showing cause and reading out the order under this sec. does not vitiate the proceedings 1927 Lab 689 · 104 I. C. 255 : 28 Cr. L. J. 815.

S. 114. (Summons or warrant in case of person not present in court.)

—the order for security cannot be passed *ex parte*. 1 C. L. R. 48.

—issuing notice with reference to sec. 113 and demanding security under s. 107 is invalid. 30 M. 282, 25 C. 798.

—a proceeding is not vitiated by the fact that the notice to the accused did not contain the details of evidence to be adduced but the accused may apply for time to begin cross-examination unless the witnesses are many or the cross-examination is lengthy. 20 Cr. L. J. 436 51 I. C. 260.

—if the evidence takes the accused by surprise, then they have the right to ask the M. for sufficient time after the evidence has been disclosed, to commence their cross-examination. But where no such application was made and there was lengthy cross-examination there was no question of surprise. 51 I. C. 260 : 20 Cr. L. J. 436.

—a list of the prosecution witnesses need not be given. 35 C. 243.

—when without sufficient notice the accused are called upon with
proof
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—where the notice is defective and the accused is unable to know the proceedings are illegal and prejudiced it was simply irregularity. 35 M. L. J. 97 : 45 M. 450 : 55 I. C. 722 : 21 Cr. L. J. 354, (34 M. 255, 23 C. 621) Ref. 19 Cr. L. J. 905 Appr. 15 W. R. 43, 3 A. 544, 8 C. 724, 1891 A. W. N. 40, 20 Cr. L. J. 436, 23 Cr. L. J. 42.

—such defect is cured by s. 537, 25 Cr. L. J. 682 : 31 I. C. 170.

—warrant of arrest does not apply to a person who has once appeared and been enlarged on bail. 32 C. 80.

—the Police can arrest a suspect criminal and then proceed against him either for substantive offence or under Chap. V. 11 it is for that reason that this section contemplates notice on the suspect while in custody. 94 I. C. 404 : 27 C. 1926 Sind 190.

S. 114. (Summons or warrant in case of person not present in court.)—*contd*

—if a person fails to attend on a summons duly served, a warrant should issue. 1 C. L. R. 48, even if application for transfer has been made to the H. C. 17 C. W. N. 536.

—a Magistrate is bound under s. 496 to release a person on bail when called upon to show cause under s. 107 or 110. 8 C. W. N. 779, 20 Bom. L. R. 121, 9 S. L. R. 158 : 32 I. C. 669, 31 M. 315 F. B., 36 M. 474.

—s. 114 is not limited to arrest within the local limits of the Magistrate's jurisdiction but applies to accused arrested outside and brought in custody within jurisdiction. 46 C. 215 (236), 28 C. L. J. 25, *contra*. 13 Bom. L. R. 889.

—a Magistrate cannot re-arrest persons who had been already discharged after executing surety bonds because the proviso to s. 114 Cr. P. C. is a proviso to the section relating to the circumstances set out in the sec. and is not a substantive provision standing by itself. 1929 Pat. 654 ; 1929 Cr. C. 382 : 117 I. C. 628 : 30 Cr. L. J. 809.

S. 115. Copy of order to accompany summons or warrant.

—this section must be strictly complied with otherwise the proceedings are invalid and the order for security will be set aside. 17 M. L. J. 438, 2 Weir 55, *contra*, it is mere irregularity. 11 Bom. L. R. 740, 1 Pat. L. T. 632, 1919 M. W. N. 639, 25 Cr. L. J. 132 (Nag.)

S. 116. Power to dispense with personal attendance.

—when the Magistrate ought to allow a person called upon to show cause to appear by pleader. 12 C. 133.

S. 117. Inquiry as to thorough information.

Amendments.

(1) Sub-sec. (3) has been added as an alternative to the immediate arrest allowed by s. 114 enabling the Magistrate to make an interim order for security.

(2) "or is so desperate or dangerous as to render his being at large without security, hazardous to the community" has been added to sub-sec. (4) making evidence of general repute admissible in a case under s. 110 Cl. (f).

—the inquiry provided by ss. 117 and 118 is not strictly limited by the term of the order drawn up under s. 112. 17 C. W. N. 331.

—proceedings under s. 117 is an inquiry within s. 517. 42 M. 9.

—joint trial is illegal where there is no association for the purpose mentioned in s. 110. 9 C. W. N. 260 (note), 9 A. 452, 21 A. L. J. 841, 21 Cr. L. J. 700 (Cl), 8 C. W. N. 180, 31 M. 276, 11 C. W. N. 472, 14 A. L. J. 268.

—when parties are in conflict with one another they cannot be said to have been associated together. 31 M. 276, 11 C. W. N. 472, 1917 P. W. R. 3, 39 I. C. 945, 65 I. C. 484. (Pat.)

—where in proceedings under s. 110 a number of suspects have been jointly associated, s. 117 (5) does not make it a condition of

S. 117. Inquiry as to thorough information —contd.

such joint trial that they should be shown to be associated together in the order itself. Clause 5 is permissive and permits an inquiry to be held where such persons are associated together. 89 I. C. 710 26 Cr. L. J. 1398.

—when the accused associate together in the matter of inquiry they may be tried together. 12 C. W. N. 214 20 C. L. J. 711 10 C. M. W. N. 751 25 C. W. N. 23 C. W. N. 488, 51 I. C. 839, 6 (6 Pat. L. T. 810 : 86 I. C. must be clear evidence to prove L. T. 810 1925. Pat. 131.

—joint trial was held to be valid when different servants of zemindar arrested different tenants and confined them to force them to execute Kabulyats. 9 C. W. N. 898 *Contra*, 27 C. 781 : 4 C. W. N. 531.

—the main principle of joint trial and joinder of charges are applicable to inquiries under this chapter. 8 C. W. N. 180, 14 C. 359, 41 A. 231 : 17 A. L. J. 147, 6 A. 214.

—it is discretionary with the court to try jointly or separately when association of several accused is proved. 27 C. 781, 6 C. 96.

—when proceedings are taken jointly under sub-seo. 5, the M. must come to a separate finding as regards each of the accused. 35 C. 929, 37 C. 91, 37 A. 33, 1895 P. P. R. 1, 6 A. 214, 9 A. 452, 1909 P. W. R. 25, 45 A. 109, 10 C. L. R. 335, 38 R. 468, 15 C. 263, 17 I. C. 72, 8 C. W. N. 180.

—procedure in a good-behaviour-case to be followed as in a warrant case and opportunity must be given to produce defence witnesses. 18 C. W. N. 171 (note), 10 A. L. J. 383, but such procedure should not be strictly followed and the accused cannot invoke the aid of s. 256 Cr. P. O. and cannot ask the court to recall witnesses for further cross-examination. 35 C. 243, 1916 P. R. 1, 1930 M. W. N. 178 58 M. L. J. 229 : 31 L. W. 243 F. B., but he has a right under s. 257 Cr. P. C. 1930 M. W. N. 178 : 58 M. L. J. 229 : 31 L. W. 243.

—an inquiry is a proceeding for security to keep the peace should be conducted as a summons case. 25 A. 273.

—where on the report of a *chauldar* proceedings were started under s. 107 Cr. P. C. for obstructing a *halat*, and the case being adjourned from time to time

"The petitioner is absent and no P. petition on behalf of the prosecu- fore discharged under s. 119 Cr. P. explanation stated that he acted according to the procedure laid down in summons cases as provided for in s. 117 Cr. P. C. and he discharged the accused under s. 147 Cr. P. C., held that the order of discharge was valid but s. 147 Cr. P. C. did not apply to a proceeding under s. 107 Cr. P. C. 31 C. W. N. 388 : 45 C. L. J. 211 : 101 I. C. 607 : 1927 Cal. 343.

—the accused should be given opportunity to bring witnesses 41 C. 806, 18 C. W. N. 171 (note), 22 W. R. 70, 6 A. 214, 39 C.

S 118 (1) Evidence and procedure—contd.

—a report of a police officer and his evidence are not sufficient to justify an order binding down a person to keep the peace. 1929 Lah. 504. 117 I. C. 817: 10 Lah. 155: 30 Panj. L. R. 694: 30 Cr. L. J. 839. 1929 Cr. C. 61. 10 W. R. 55.

—the finding of the M. must be based on clear evidence and reasonings and not in general terms. 10 B. 174, 27 C. 656, 1899 A. W. N. 114, 17 W. R. 35, 21 W. R. 6. 24 W. R. 33, the evidence must be scrutinized. 23 C. W. N. 488

—the case cannot be decided on the personal knowledge of the M. 27 C. 781, 37 A. 53, 14 A. L. J. 769

—in case of several accused there must be distinct findings. 35 C. 929, 6 A. 214 13 C. W. N. 244.

—uncorroborated evidence of appover in previous case is no evidence. 5 L. B. R. 72.

—the M. should not frighten the defence witnesses 27 I. C. 178 (C.)

—notice under s. 112. W. R. Cr. 5, but it accused is not prejudiced. 14 C. W. N. 221, 14 I. C. 415.

jail against whom order the reports from Revenue tate of affairs not contemplated. L. J. 148.

—as to the onus of proof of necessity for the order, see 9 A. 452.

—overt acts must be proved before an order can be passed under s. 118. 9 A. 452, 20 W. R. 57, 19 W. R. Cr. 47: 10 B. L. R. 441.

—a person acquitted of dacoity cannot be bound over on the evidence of suspicion only. 11 C. W. N. 129.

—generally one year should be the term of the security for good behaviour. 30 I. C. 438 (M); if the period for which the security demanded.

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Lah. 109.

—when the Magistrate orders to give security for behaviour under s. 110 for a period of three years and the accused fails to furnish security and is detained in jail pending the orders of the Session judge, and the security is offered afterwards, held that the Magistrate can accept the security and the reference to the Session Judge automatically ends. 1928 Lah. 61: 29 Cr. L. J. 236: 107 I. C. 286.

—proceeding under Chapter VIII is "inquiry" and not "trial" so the person proceeded against cannot be deemed to be an "accused" or deemed to be "convicted." 9 Pat. 131.

(2) Security.

—order to execute a second recognizance during the continuance of the first is illegal. 18 W. R. Cr. 44: 9 B. L. R. Ap. 30, 17

S. 118 (2) Security—contd

—if the condition is broken the person executing the bond and the surety are each liable. 9 C. L. J. 296.

—the bond contemplated by ss 112 and 118 is one bond for one amount and is discharged, on forfeiture, by the payment of the amount due by either the principal or the surety. 84 Ind. C. 546 : 5 L. 448.

—generally, one year should be the term of the security. 30 I. C. 438 (M)

—in default of furnishing security for good behaviour the M. cannot order solitary confinement. 12 A. L. J. 823 : 36 A. 495 : 25 I. C. 528

(3). Appeal and revision.

—the High Court can revise or reduce the amount. 23 A. 86, 2 C. 110.

—no appeal lies under ol. 41, of the Letters Patent to the Privy Council against an order passed by the High court on the Appellate Side under s. 118. 35 C. 242 : 18 C. L. J. 119, 18 C. L. J. 121, 28 M. L. J. 307, 28 I. C. 527, 21 I. C. 470.

—no appeal from an order requiring security to keep the peace. 27 A. 623 : A. W. N. (1905) 125

—the H. C. will interfere only on the very clearest and strongest grounds which demonstrate that there has been in the particular case a gross miscarriage of justice. 1889 P. R. 23, 1929 Nag. 328 : 1929 Cr. O. 532.

—the H. C. will interfere when the materials do not support the order. 38 C. L. J. 198, 1912 P. L. R. 195, 14 A. L. J. 215, where the defence evidence was not duly considered 17 Cr. L. J. 461 (All.), where due inquiry as required by sec. 117 was not made, 37 A. 30, where the Lower Appellate court did not hear the case regularly, 17 Cr. L. J. 461 (A) or did not examine the evidence and the judgment was very short 14 A. L. J. 279, 13 Cr. L. J. 9 (A).

S. 119. Discharge of person informed against.

—the person proceeded against under s. 110 Cr. P. C. is not an accused person within s. 437 Cr. P. C., 27 C. 662 : 6 C. W. N. 163. *Contra*, 21 A. 107, 24 A. 148, 38 Punj. Rec. 61, A. W. N. 1899 p. 203, 16 B. 661.

—when the information is found to be unfounded, the Magistrate cannot adjudicate upon entirely different grounds, 21 W. R. Cr. 6.

—“discharge” means permission to depart and not the discharge of an accused person. It does not apply and no order of discharge can be made. 33 M. 85, 27 C. 662 : 6 C. 24 L. C. 843, 46 A. 235, 1911 A. 148, 36 A. 147, 1899 A. r. P. C. as now amended applies to the person accused of an offence; so further enquiry cannot be directed against a person discharged under s. 119.

S. 119. Discharge of person informed against.—contd.

—the District Magistrate cannot under sec. 416 Cr. P. C. revise the case of a person who has been called upon to give security and who has been discharged under s. 119. 1928 All. 755

—where in a proceeding under s. 107 neither the complainant nor the P. Ws were present nor any application was made and the accused persons were discharged under this section, held that the order of discharge was valid 31 C. W. N. 388 : 45 C. L. J. 211 : 101 I. C. 607 : 1927 Cal. 343 : 28 Cr. L. J. 479

S. 120. Commencement of period for which security is required.

—when conviction is contemporaneous with the order for security, the sentence should be carried out first 24 W. R. Cr. 13, 5 L. B. R. 34, 22 Cr. L. J. 95 (All.)

—the object of the sub-sec. (2) is to allow a M. to grant time to the accused instead of at once proceeding to order imprisonment 4 C. W. N. 121

—the Magistrate has power under this section to postpone the date from which the security should take effect i.e. to give the accused time within which to furnish it until it is seen whether the accused can furnish the security or an order will have to be passed referring the case to the Sessions Judge for final order. 92 I. C. 889 : 24 A. L. J. 327 : 27 Cr. L. J. 377 : 1926 All. 297.

—sub-sec. (1) does not apply to a person who after a commitment to jail for failure to furnish security, is convicted of a substantive offence; the two terms must run concurrently. 12 Bom. L. R. 129, 4 M. L. T. 223, 4 I. C. 603, 6 Bom. L. R. 1098, 27 M. 525, *Contra* 30 A. 334, and an order of imprisonment for failure to furnish security should not be passed until the term of imprisonment for the substantive offence has expired. 4 Bom. L. R. 934, 28 I. C. 160, 59 I. C. 383 (A).

—where during the time allowed to a suspect to furnish the security under s. 118 he is sentenced to imprisonment for an offence committed by him prior to the date of such order, it is not competent to the Magistrate to fix the date of the expiry of such sentence as the date for computing the period from which such security is to be furnished. 96 I. C. 113 : 27 Cr. L. J. 865 : 20 S. L. R. 163 : 1926 Sind 273 F. B., 101 I. C. 463 : 28 Cr. L. J. 431 : 1927 Sind 166. The proper procedure under the circumstances would be that the Magistrate should not pass the order for detention of the suspect under s. 123 at once but postpone further proceedings under that sec. till the suspect has served out the period of sentence for the substantive offence. 101 I. C. 463 : 1927 Sind 166 : 28 Cr. L. J. 431.

—but the sentence of imprisonment passed under s. 123 Cr. P. O. on failure to furnish security under s. 118 Cr. P. C. runs concurrently with the sentence of imprisonment passed for independent offence. 29 Bom. L. R. 509 : 103 I. C. 103 : 28 Cr. L. J. 652 : 1927 Bom. 657.

S. 120. commencement of period for which security is required.—*contd*

—while a person was undergoing rigorous imprisonment being sentenced for 12 months on proceedings initiated under s. 109 Cr. P.C. he was sentenced to three years rigorous imprisonment on proceedings under s. 110, held in view of sec 123 Cr. P. C. the person should have been required to furnish security on the expiration of the period of first sentence and under sec 123 Cr. P. C. the person should be sentenced to two years rigorous imprisonment after that period. 1929 Sind 166 . 117 I.C. 777 . 30 Cr. L. J. 819 . 1929 Cr. C. 335

S 121 (Contents of bond)

—in case of the accused being bound down under s. 106 the amount of recognizance cannot be forfeited if he is convicted of theft, 18 W. R. 63 Cr. nr abduction, 6 P. R. (1906) Cr., 22 P. R. 1914

—instigation of the act likely to commit breach of the peace is enough for the breach of the bond 2 M 169, 11 W. R. 52, 15 W. R. 14, 18 W. R. 63.

—what constitutes breach must be determined with reference to s. 121 Cr. P. C. the breach of the bond is committed as soon as a person bound over commits any offence punishable with imprisonment, the conviction need not be for an offence *ejusdem generis* to the circumstances under which the security was demanded. The persons giving the bond should not be actually convicted before proceedings are taken against his surety. 50 A. 666 . 26 A. L. J. 443 : 1928 All. 232 . 30 Cr. L. J. 203 . 113 F. C. 740.

—the Magistrate cannot imprison for the unexpired portion of the bond but can take fresh proceedings 28 A. 629, 3 O.L.J. 456.

—recognizance-bond should not be forfeited unless the person can cross-examine the witness on whose information he was called upon to show cause 4 C 865 : 4 C. L. R. 243 F. B.

—an actual commission of an offence is necessary for the forfeiture of the bond for good behaviour 2 B. L. R. App. 11, 1915 P. R. 10, but "commission of an offence" does not necessarily imply conviction. 24 Cr. L. J. 588

—an offence committed in a Native State amounts to such breach of the bond. 1910 P. R. 28 *Contra*, 1918 P. R. 26.

—on breach of a bond the amount is forfeited and may be recovered but the accused cannot be forthwith imprisoned for the unexpired portion of the term, the Magistrate's remedy being to take fresh proceedings 29 A. 629.

S. 122. Power to reject sureties.

Amendments

The procedure regarding inquiry and delegation of power of inquiry and the grounds for rejecting sureties including those previously accepted, which have been the points of discussion by the High Courts, have been provided by the amendments.

—grounds for refusal of surety must be given 13 C. W. N. 27 (note) and grounds must be valid and reasonable. 22 W. R. Cr. 37.

S. 122. Power to reject sureties.—*contd.*

10 C W. N. 1027 and the Magistrate must bring them to the notice of the persons so that they may controvert them. 14 C. W. N. 709.

—the ground of refusal must be reasonable and valid and must be dealt with in each case as it arises. 14 C. W. N. 666; 6 Ind. C 668; 33 C 446

—the M cannot rely on his personal knowledge in rejecting surety 7 S. L. R. 94, nor can he reject the surety on private information without giving the surety an opportunity to controvert it. 14 C W N. 709

—rejection of sureties merely on perusal of Police report is not valid 15 C W. N. 256 (note), 12 A. L. J. 1004; 26 I. C 646, 10 C W N. 1027, 25 A. 272, 18 A. L. J. 324, 20 A. L. J. 760, 13 A. L. J. 469, 12 A. L. J. 1004, 29 C. 455, 2 S. L. R. 15, 8 S. L. R. 173, 15 Cr. L. J. 727 (A), judicial inquiry must be made by the Magistrate who has made the order under s. 110. 19 C. W. N. 230; 42 C. 706; 27 A. 293, 16 Cr. L. J. 54, but he may delegate his power of inquiry under the recent amendment.

—the Magistrate's discretion in this matter is not fettered in any way, 13 C W. N. 80, 21 C. W. N. 925; 44 C. 737, 39 I. C. 293, 37 C. 446 41 C 764, 14 C. W. N. 666, 44 C. 737 but this discretion should be exercised after satisfactory and legal inquiry; 42 C. 706, 12 A. L. J. 1004, he cannot refuse surety merely on mere conjectures and surmises. 41 C. 764, 10 C. W. N. 1027; 20 W. R. 37.

—the question whether a particular person who is offered as a surety is or is not fit within the meaning of s. 122 Cr. P. C. must be decided by the Magistrate himself, upon evidence taken for the purpose and securities offered should not be refused except after judicial inquiry. 43 C. 1024. 20 C. W. N. 1133; 24 C. L. J. 51, 3 C. L. J. 575, 42 C. 706; 19 C. W. N. 220, 10 C. W. N. 1027, 37 C. 91 *fol.*

—the Magistrate must himself make the inquiry as to the fitness of the proposed sureties and cannot delegate the power. 1898 A. W. N. 154, 26 A. 371; 25 A. 272, 27 A. 293, 12 A. L. J. 1004, 7 O. C. 113, 11 O. C. 267, 15 C. 455, 10 C. 446, 10 C. 447, 10 C. 448, 10 C. 449, 10 C. 450, 10 C. 451, 10 C. 452, 10 C. 453, 10 C. 454, 10 C. 455, 10 C. 456, 10 C. 457, 10 C. 458, 10 C. 459, 10 C. 460, 10 C. 461, 10 C. 462, 10 C. 463, 10 C. 464, 10 C. 465, 10 C. 466, 10 C. 467, 10 C. 468, 10 C. 469, 10 C. 470, 10 C. 471, 10 C. 472, 10 C. 473, 10 C. 474, 10 C. 475, 10 C. 476, 10 C. 477, 10 C. 478, 10 C. 479, 10 C. 480, 10 C. 481, 10 C. 482, 10 C. 483, 10 C. 484, 10 C. 485, 10 C. 486, 10 C. 487, 10 C. 488, 10 C. 489, 10 C. 490, 10 C. 491, 10 C. 492, 10 C. 493, 10 C. 494, 10 C. 495, 10 C. 496, 10 C. 497, 10 C. 498, 10 C. 499, 10 C. 500, 10 C. 501, 10 C. 502, 10 C. 503, 10 C. 504, 10 C. 505, 10 C. 506, 10 C. 507, 10 C. 508, 10 C. 509, 10 C. 510, 10 C. 511, 10 C. 512, 10 C. 513, 10 C. 514, 10 C. 515, 10 C. 516, 10 C. 517, 10 C. 518, 10 C. 519, 10 C. 520, 10 C. 521, 10 C. 522, 10 C. 523, 10 C. 524, 10 C. 525, 10 C. 526, 10 C. 527, 10 C. 528, 10 C. 529, 10 C. 530, 10 C. 531, 10 C. 532, 10 C. 533, 10 C. 534, 10 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S. 122. Power to reject sureties.—*contd.*

—defending the accused, 16 A. L. J. 263 or being witness on the side of the accused, 15 Cr. L. J. 727 (A) are no grounds for rejecting surety

—a Magistrate should not refuse to accept surety only for the reason that he is a relation of the person ordered to give security. 25 A. 131 A W N (1902) 197, 142 P. L. R. 1914 : 6 P. R. 1914, 10 C. W. N. 1027, 3 C. L. J. 575, I. S. L. R. 3, 22 Cr. L. J. 22 (A.)

—one conviction under the I P C does not of itself render the proposed surety unfit for ever to stand security 26 A. 189 : A W N. (1903) 220, 22 Cr. L. J. 483 (C), 25 C. W. N. 140, 18 A. L. J. 324, 62 I. C. 179,

—a Magistrate holding an inquiry as to the fitness of surety has power to record evidence on oath. 26 A. 371. A W N. (1904) 52, A W N (1898) 154, A W N. (1903) 36, 2 S. L. R. 11.

—a Magistrate cannot impart his own personal knowledge without giving evidence ? S L R. 94, 2 S. L. R. 11, 15.

—where the person bound down was a notorious dacoit and there was a consensus of opinion that his brother would not be able to keep him in control, the refusal was reasonable and valid. 41 C. 764 : 22 Ind. C. 745. *but see below*

—the word "Magistrate" in s. 122 implies the Magistrate who made the order or his successor in office who is properly seised of the enquiry. 5 S. L. R. 87, 12 Cr. L. J. 410.

—the person required to furnish security shall prove to the satisfaction of the court that the surety is fit. 5 S. L. R. 87 : 12 Cr. L. J. 410.

—the first thing to be considered is the ability of the sureties to pay the sums in case of default. 14 C. W. N. 666, 35 C. 400, 6 C. W. N. 593, 13 C. W. N. 159 (note), 3 C. L. J. 575, 37 C. 91, 43 C. 1024.

—unfitness is not limited to pecuniary unfitness alone ; Magistrate's discretion is unfettered. 8 C. L. J. 243

—distance of the residence of the surety from the place of the house of the accused, or that the surety would be unfit to control the accused is no ground of refusal. 4 C. W. N. 797, 6 C. W. N. 593, 12 C. W. N. 59 (note), 37 C. 91, 14 C. 737, 44 B. 385, 44 C. 737, 21 C. W. N. 925 : 18 Cr. L. J. 453, 43 C. 1024, 16 Bom. L. R. 138 : 15 Cr. L. J. 268. *Contra.* 13 C. W. N. 80, 41 C. 764 : 22 Ind. C. 745, A. W. N. (1895) 142, 81 Ind. C. 316, 26 O. C. 284.

—the case of each person must be considered. 14 C. W. N. 49.

—a surety giving false evidence is liable to prosecution under s. 193 I. P. C. 26 A. 371.

—s. 123 sub-sec. 3 does not authorise the District Judge to
: C. W. N. 463.

13 C. W. N. 80, 12 A.
he discretion of the M. has
ill interfere. 13 C. W. N.

S 123 Imprisonment in default of security. Amendments

Sub-sec 3 (A) has been added providing reference of proceedings against all to the superior court and sub-sec 3 (B) has been added giving power to the Sessions Judge to transfer proceedings to Additional S J and Assistant S J. and nature of punishment has been distinctly provided by adding certain words in sub-sec. (6).

—this section applies to the case where default is made in furnishing security and if the security is given the section does not apply. 23 C 671, 40 A. 39

—an order merely directing the accused to be imprisoned till he gives security is illegal. 8 C. 644

—the detention should be for the period for which the accused is bound down. 23 A 422, 1930 Lah 49.

Magistrate to award a shorter term

—solitary confinement cannot form a part of the imprisonment in default of furnishing security under s. 110. 36 A. 495.

—a sentence of imprisonment under this section is not a 'sentence of imprisonment' as contemplated by s 397, 27 M. 525, 5 Bom L. R. 26, 6 Bom. L. R 1098, 31 M. 515, 2 Weir 452, 34 B. 326; 12 Bom. L. R 129, 37 B. 178; 14 Bom. L. R 965, 31 M. 515; 4 M. L. T. 223, 1914 M. W. N 500, *Contra.* 30 A. 334 F B.

—a summary Court has power to award under s 123 Cr. P. C. more than 3 month's imprisonment. 1927 Mad. 976; 1927 M. W. N. 788; 58 M. L. J 762; 51 M. 178; 106 I C. 218; 28 Cr. L. J. 1034; 39 M. L. T. 658

—where a person committed to prison under this sec. is convicted of an offence, the terms of imprisonment cannot be deferred but must at once commence. 6 Bom. L. R. 1098, 37 B. 178; 14 Bom L. R. 965.

—under cl. 3, the Sessions Judge of the High Court, as the case may be, has jurisdiction to deal with the merits of the case and pass order what he deems proper. 35 B. 271; 13 Bom. L. R. 203; 10 Ind. C. 802, 12 C. W. N. 463.

—the order of the Sessions Judge should show that he has considered the case of each of the accused on the merits and separately. 37 C. 91, 12 C. W. N. 463, 1910 P. R. 29, 13 I. C. 162 (A), 35 B 271, 40 C. 376, 37 C. 656, 1899 A. W. N. 151.

are laid under cl.
sureties offered by
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—when a reference is made to the Sessions Judge, notice should be given to the accused and his pleader must be heard. 23 C. 354, 493, 27 C. 656, 4 C. W. N. 797, 25 A. 375, 16 B. 661, 13 O. C.

S. 123. Imprisonment in default of security. —contd.

354 8 Ind. C. 879, 3 L. B. R. 43, 5 L. B. R. 34 : 2 Ind. C. 531, 10 Cr. L. J. 69.

—Sessions Judge cannot order re-hearing of case but can pass order on evidence in the record. 1925 Cal. 191.

—a Joint Sessions Judge appointed to "try all cases which may be committed for trial by the Magistrate of the district" cannot pass orders on a reference under this sec. Rat. Un. Cr. C. 830. Cr. Rul. 73 of 1895, F. B., 2 L. B. R. 16, L. B. R. 1893-1900, 245, 381.

—the record of evidence by a Presidency Magistrate, where reference is made to the High Court, may not be full as one in the case of Muffasil Magistrates. 13 C. W. N. 318.

—District Magistrate cannot refer to the High Court if the Sessions Judge has refused to confirm the order. 28 A. 91, 23 C. 249.

—no appeal lies to the High Court from an order of the D. M. confirmed by the S. J. on reference, detaining a person in prison till he should provide security for good behaviour. 9 C. 878, P. L. R. 1901 59, Punj. Rec. 1886 P. 55, 24 W. R. Cr. 12, L. B. R. 1893-1900, 381, 7 S. L. R. 80.

—appeal lies to the D. M. notwithstanding that the proceedings may have been laid before the S. J. under this sec. But the right of appeal is lost as soon as the S. J. has passed order under sub-sec. 3. 13 O. C. 354, 8 Ind. C. 879.

—additional Sessions Judge has jurisdiction to hear reference transferred to him by the Sessions Judge. 50 C. 229 : 39 C. L. J. 75 ; 1923 Cal. 649 : 27 C. W. N. 996 : 81 Ind. C. 149 : 50 C. 985 : 81 Ind. C. 61.

—under the Notification of the Government of Bengal Judicial No. 113 J. D. of the 19th of June 1916, purporting to be an order under s. 193 (2) Cr. P. C. a Sessions Judge has power to transfer a bad livelihood case referred to him under clause (2) of this section to Assistant Sessions Judge, 50 C. 229 : 39 C. L. J. 75 : 27 C. W. N. 996 : 1923 Cal. 649 : 81 I. C. 149.

—s. 123 cl. (3) empowers the S. J. when proceeding with the taking of a security for good behaviour to require from the M. any sum he thinks necessary. 81 Ind. C. 936. It does not empower him to order a re-hearing of the case *above case*.

—s. 123 applies specifically only to ss. 106 and 118 and not to s. 562 of the Code. 84 Ind. C. 349 : 2 R. 360 (1925).

—S. J. is required to pass definite order binding over and is not to confirm Magistrate's order. 85 I. C. 944 : 26 Cr. L. J. 656 : 10 Oudh 517.

—pending the hearing of a reference in a good behaviour case the S. J. has power to enlarge the accused on bail. 50 C. 969 : 37 C. L. J. 592.

—on the failure to furnish security the M. cannot pass an order for rigorous imprisonment without making a reference to the S. J., 57 I. C. 287 : 21 Cr. L. J. 623.

S. 123. Imprisonment in default of security.—contd.

—when a person is committed to prison for failure to furnish security under s. 123 (1) he is not undergoing a sentence within s. 397. 8 N. L. R. 20, 13 Cr. L. J. 189; 13 I. C. 1005; 1 Pat. L. J. 212; 17 Cr. L. J. 528; 36 I. C. 496.

—an order that the accused shall have to suffer simple imprisonment for one year in default of furnishing security cannot be sustained under s. 123 Cr. P. C., as the accused is entitled to be released from custody the moment he furnishes security. 1927 Mad. 976; 53 M. L. J. 762; 1927 M. W. N. 788.

—if a person when undergoing imprisonment for failure to furnish security, is convicted of substantive offence, he will undergo the latter punishment first. 14 Bom. L. R. 965; 37 B. 178; 13 Cr. L. J. 849; 8 N. L. R. 20, 13 Cr. L. J. 189.

S. 124. Power to release person imprisoned for failing to give security

—the order passed by the Dt. M. under this sec., may be of an original or of a revisional character. The M. may release a person on various grounds. 37 M. 125 F. B.

—the Dt. M. is the best Judge as the head of the district to determine when and under what circumstances he should act under this sec. 1893 A. W. N. 183.

S. 125. Power of Dt. M. to cancel bonds.

—the jurisdiction of the Dt. M. under this sec. is not merely an original jurisdiction but may be exercised as in appeal or revision. 34 C. 1; 11 C. W. N. 25; 4 C. L. J. 428 F. B., 32 C. 948; 9 C. W. N. 860 *overruled* 33 A. 626, 40 A. 140, 16 Cr. L. J. 555, 24 Cr. L. J. 204 (Oudh) 24 Cr. L. J. 616 (Oudh).

—but a contrary view has been held in the following cases where it has been held that the jurisdiction of the Magistrate under this sec. is not appellate or revisional but original. 71 I. C. 668; 24 Cr. L. J. 204; 1923 All. 494, 44 A. 614, 41 A. 651, 35 A. 143, 39 A. 466, 1 N. L. R. 98; 16 Cr. L. J. 555, 24 Cr. L. J. 204 (Oudh), 24 Cr. L. J. 616 (Oudh), 20 Cr. L. J. 224, 489, 14 C. W. N. 306; 37 C. 72; 5 Ind. C. 555, 35 A. 103; 11 A. L. J. 16.

—the Magistrate may cancel the bonds of the applicant or his pleader. 39 A. 466; 18 Cr. L. J. 143.

—the Magistrate has no revisional authority over the subordinate M.

—the Magistrate may set aside the order of the subordinate M. as *ultra vires* or to quash the proceedings. 3 P. L. T. 103; 65 I. C. 435; 23 Cr. L. J. 281.

—the jurisdiction of the D. Magistrate under this sec. is not limited; he can cancel a bond on ground that the order ought not to have been made. 34 C. 1; 4 C. L. J. 428; 11 C. W. N. 25 F. B., 9 C. W. N. 860; 32 C. 948 *overruled*, 37 M. 225 F. B., 35 A. 103, 41 A. 651, 11 N. L. R. 98, *contra*, 1 C. W. N. 394, 29 C. 453; 6 C. W. N. 13 W. R. 44.

S. 125. Power of Dt. M. to cancel bonds.—contd.

—the D. M. can cancel a bond on the ground that its evidence is insufficient 37 M. 125 : 25 M. L. J. 459 : 14 M. L. T. 328 : 1913 M. W. N. 715, F. B. 11 N. L. R. 98 *Contra.* 44 A. 614 : 67 I. C. 350 : 23 Cr. L. J. 398. 20 A. L. J. 521.

—the only ground on which a Dt. M. can cancel a bond for keeping the peace and to be of good behaviour is that something has supervened since the date of the first court's order satisfying the Dt. M. that there is no longer any necessity for keeping the accused person under a bond, 44 A. 614 : 67 I. C. 350 : 23 Cr. L. J. 398.

—a Dt. M. cannot set aside a proceeding under s. 107 even where the subordinate M. has acted without jurisdiction. 66 I. C. 425 (Pat).

—provisions of s. 428 dealing with remand has no application. 20 Cr. L. J. 221, 489

—under this sec. D. M. may cancel a bond for good behaviour but he cannot send the persons bound to jail. 8 A. L. J. 658 12 Cr. L. J. 480, 33 A. 624, 29 C. 455.

—when a Magistrate has accepted sureties the D. M. cannot cancel the bond on police report for insufficiency. 6 C. W. N. 291 : 26 C. 455, 1 C. W. N. 394.

—a Magistrate acting under s. 145 has jurisdiction to sanction prosecution under s. 476 Cr. P. C. 14 C. W. N. 306 37 C. 72 : 5 Ind. C. 555.

—under s. 423 (d) an appellate court has power to set aside an order for security to keep the peace. 6 C. W. N. 422.

—In an appeal from an order under s. 110, the D. M. should write a judgment considering the evidence on the record and the pleas of the accused. 17 Cr. L. J. 309 : 19 P. R. (1916) Cr.

—when proceeding started under s. 107, is transferred to another District the D. M. of the latter District only has jurisdiction under this section. 23 C. W. N. 958.

—when an order is passed by a Magistrate subordinate to a Dt. M. the record should be laid before the Dt. M. and before the S. J. to consider the matter. 40 A. 140 : 43 I. C. 604, 37 M. 125.

—the revisional jurisdiction of a Sessions Judge or Dt. Magistrate under s. 435 is not in any way trenching upon by the provisions of sec. 125. 4 Pat. J. W. 327 : 3 Pat. L. J. 302 : 45 I. C. 397 : 19 Cr. L. J. 589

S. 127. (Assembly to disperse on command of Magistrate or police officer.)

—a Deputy commissioner of the police who is an officer superior in rank to an officer in charge of a police station may act under this section. 7 B. 42 : 7 Ind. Jur. 202.

—whether a disturbance of the peace is likely to be caused, must of necessity be very much a matter of opinion, and the police officer, to whose discretion the law leaves the duties of dispersing assemblies, must of course act upon his own opinion one way or the other. 7 B. 42 : 7 Ind. Jur. 202.

S. 127. (assembly to disperse on command of Magistrate or police officer.)—contd.

—when the police officers act under ss. 127 and 128, what instructions are to be given to the jury—right of private defence—necessity of sanction 33 C. L. J. 340 25 C. W. N. 628 : 62 I. C. 878.

—when a police order is disobeyed the proper procedure is that provided in s. 127 Cr. P. C. to order the prosecution of the persons for being members of an unlawful assembly. 101 I. C. 475 1927 Pat. 191 : 28 Cr. L. J. 443 8 Pat. L. T. 245

S. 132 (Protection against prosecution for acts done under this Chapter)

—the sanction required under the section is not affected by s. 337 (b), 31 M. 80 6 Cr. L. J. 382.

—prosecution without the necessary sanction is bad. 16 M. 473, 2 B. 288

—the term "good faith" is to be interpreted relatively to the position of the person doing an act or omission. 12 B. 377.

—when the order is illegal subordinate is not bound to obey. 21 M. 249 1 Weir 310

—the powers of a police officer in charge of a patrol boat are no higher than those of an officer in charge of an outpost, and so he cannot use firearms under this sec. and no sanction is necessary for his prosecution for such act. 50 C. 318 : 1923 Cal. 517.

S. 133 (Conditional order for removal of nuisance). Amendments

The application of the sec. has become wider by the amendment
 (i) All 1st class Magistrates are empowered now to deal with the case without being specially empowered by the Local Govt. (ii) In para (3) the words "regulated" and "the keeping of goods should be regulated" have been added (iii) In para (5) the words "tent or structure or any tree" have been added (IV) In para 7 provision relating to the disposal of dangerous animals has been added, besides some other consequential changes.

Sub-headings of notes

- (1) Scope of the section.
- (2) Applicability of the section.
- (3) Public place, public way.
- (4) Nuisance.
- (5) Jurisdiction.
- (6) Procedure
- (1) Scope of the section.

—the scope of the section is limited to injuries arising or likely to arise to the members of the general unascertained mass of the public whose ordinary avocation may take them to the neighbourhood of the building supposed to be in a dangerous condition 20 A. 501 : 18 A. W. N. 141, 36 A. 185 : 12 A. 25, 24 Ind. C. 745, 81 Ind. C. 942.

S. 112. (1) Scope of the section.—contd.

—this Chapter is not intended to obtain by summary criminal process what one fails to get through civil court or when a civil suit is pending. There must be urgency or imminent danger to the public interest. 32 Punj Rec. (1897) 7.

—it is an emergent section framed to deal with evils either existent or imminent. A. W. N. (1901) 126.

—as under s. 133 (3) no order duly made by a M. under this sec. can be questioned by the civil court, s. 133 should be sparingly used. 18 C. W. N. 1086, 42 C. 158.

—the second para of sec 133 prevents the civil court from questioning the conditional order made under s. 133, but the absolute order made by the M. may be questioned by the civil court. 1929 All. 833; 1929 Cr. C. 358.

—s. 133 is not a bar to a proceeding under s. 147, 26 M. L. J. 233.

—proceedings under s. 133 are more of the nature of civil than criminal proceedings and the person proceeded against is not an "accused" and may be examined on oath. 9 C. W. N. 983; 2 C. L. J. 149 24 C. 395.

—a. 133 does not provide for costs. 85 I. C. 357; 26 Cr. L. J. 517; 1925 Cal 399

—costs of the removal of the nuisance must be realised only by proceeding against those parties to the proceeding who were served with the notice of the order. 44 C. L. J. 211; 99 I. C. 62; 1927 Cal 70; 28 Cr. L. J. 30.

(2) Applicability of the section.

—the section does not apply where there is *bonafide dispute*
as to the right of the owner of the land. 1148; 19 C. L. J.
1 C. 8, 12 C. 137,
5 A. 656, 74 I. C.
28 Cr. L. J. 910 :
the Magistrate
as to the right
4: 107 I. C. 485.

—this sec does not apply to longstanding obstruction but to an unlawful obstruction lately built in a public place. 31 Cr. L. J. 167; 120 I. C. 796.

—mere assertion or claim of title made without reasonable ground or honest belief in it or honest intention to support it does not oust the jurisdiction. 17 C. 562, 23 C. 499, 25 C. 278, 2 C. W. N. 555, 3 C. W. N. 345, 6 C. W. N. 886, 7 C. W. N. 117, 11 C. W. N. 26 (note), 28 A. 98; A. W. N. (1905) 202; 2 A. L. J. 599, 15 Bom. L. R. 57, 25 P. W. R. 1910 Cr., 45 A. 656.

—this section is not intended to be employed to avoid the necessity of filing a civil suit in regard to a construction which has been in existence for a long time (here 15 years) 91 I. C. 59; 27 Cr. L. J. 27; 1926 All. 157.

S. 133. (2) Applicability of the section.—*contd*

—it does not contemplate an enquiry into disputed question of title, 4 Bom. L. R. 687, 22 B. 983, 11 C. 8, 12 C. 137, 15 Bom. L. R. 57, Rat. Un. Cr. C. 378, 4 C. P. L. R. 142, 19 C. L. J. 631 : 18 C. W. N. 1148, which must be left to be determined by the civil court. 18 C. W. N. 1148, 19 C. L. J. 631, 18 C. W. N. 1086, 42 C. 158, 15 Bom. L. R. 57 : 14 Cr. L. J. 74, 18 I. C. 410.

—the section empowers the Magistrate to order the removal of any obstruction from any way or public place. 12 A. L. J. 1924, 15 Cr. L. J. 724

—the word "remove" in para 2 of s. 133 does not contemplate ordering a person carrying on a trade to restore the *status quo*. So where a Magistrate ordered the making of the bricks to cease and the pits to be filled up, the portion of the order requiring the opposite party to fill up the pits should be set aside. 51 A. 489 : 1929 All. 114, 116 I. C. 21 : 30 Cr. L. J. 561 : 27 A. L. J. 177.

—to apply this sec. not only the way, river or channel should be one of public use but also the alleged obstruction must be caused to the public : i.e. the complaint must be by the general public. 50 A. 871 : 26 A. L. J. 1285 : 1928 All. 627 : 29 Cr. L. J. 661 : 110 I. C. 213

—the Magistrate may order the removal of a *bund* but cannot order the reconstruction of it. 40 C. L. J. 597.

—s. 130 does not provide for reconstruction of obstruction re-

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stay the proceedings under s. 139 A. (2) and leave the parties to have the matter decided in the Civil Court. 81 Ind. C. 904 (c) : 25 Cr. L. J. 1080.

—having regard to the normal traffic of a country road, a branch of a tree 15½ feet above the level of the road cannot be called an unlawful obstruction. 83 Ind. C. 664 : 22 A. L. J. 436 : 1924 All. 667.

—s. 133 deals with the condition of things at the time when the inquiry is made, but it is not meant to apply to what may happen at some indefinite time in the future or under quite abnormal circumstances. 83 Ind. C. 664 : 22 A. L. J. 436 : 1924 All. 667.

—the criminal court has to maintain the possession as can only be revived
favour. 1928 Pat.
42.

jury so as to give
L. J. 597, 1925 Cal.

399 : 85 I. C. 357.

—dispute between two villages in respect of the rights to dig a clear water-course for irrigation-purposes is a within sec. 133. 25 P. W. R. 1912 : 16 I. C. 162, 2 P. R. 988 Diss.

S. 133. (2) Applicability of the section.—*contd.* .

—an order under s. 147 Cr. P. C. is made without jurisdiction if it is passed in a proceeding under s. 133 without any action under s. 145 Proceedings under s. 133 are in entirely different Chapter of the Code. 15 C. W. N. 667; 12 Cr. L. J. 43; 9 I. C. 262.

—but s. 133 is not a bar to a proceeding under s. 147, 26 M. L. J. 233

—proceedings under s. 133 are more of the nature of civil than criminal proceedings and the person proceeded against is not an "accused" and may be examined on oath. 9 C. W. N. 983; 2 C. L. J. 149, 24 C. 395.

(3) Public place, public way,

—the duty of determining whether the site of the obstruction as a public place or public way is cast by statute on the Magistrate in the first place and under no circumstances it can be left to the jury. 72 I. C. 617; 1923 Lah. 525; 24 C. L. J. 457; 4 Lah. 224; 5 Lah. L. J. 420, nor the party against whom the order is directed need contend that the land is his private land. 120 I. C. 289

—the fact that the residents of a particular village had a right to take the cattle across a field was not sufficient to constitute a public way. 1906 4 Cr. L. J. 65, 36 A. 209; A. 656

upon the unmetalled portion of a Government road can be properly proceeded against under this sec. A. W. N. (1901) 25.

—in a *bona fide* dispute between a private individual and the State as to the right of the former on the ground on which a tank had been made by building a wall, this sec. Rat. Un. Cr. 478

water flows from adjoining field is not a channel which can be lawfully used by the public and this obstruction to water cannot be dealt with under this sec. 12 A. L. J. 248; 15 Cr. L. J. 229, 36 A. 209, 1906 A. W. N. 190, 22 B. 998, 34 A. 345, 32 C. 930 Dist.

—the word "channel" is not defined in the Cr. P. C. but it is quite wide enough to include a water-course carrying water to a public *urani*. Where there was a catchment area in the centre of which there was a water-course which was obstructed and the water flowing into the water-course was attempted to be carried away by the petitioners to their village tank by building a bund and cutting new channel making the water run away in a different direction, this was an obstruction to the water-course and can be dealt with under this sec. 91 I. C. 537; 1926 Mad. 165; 27 Cr. L. J. 105; 1925 M. W. N. 663.

—not only the way, river or channel should be one of public use but the obstruction must be of that public use. 22 B. 998, 11 C. L. J. 659; 81 I. C. 942.

—this sec. is applicable to a dispute between two villages in respect of the rights of one to dig and clear a water-course for

S. 133. (3) Public place, public way—contd

irrigation purposes, denied by the other. 25 W. R. 1912 Cr: 16 Ind. C 162 13 Cr L. J. 594, 2 P. R. 1903, Cr 22 B. 988.

—the obstruction of a private path is not a nuisance under this section 2 W. R. Cr 36, 1 W. R. 344.

—it does not apply to the violation of a private right but only to public nuisances. 22 W. R. 19, 25 W. R. Cr 4.

—the provision of this sec applies to public thoroughfare. 5 C. 875, 36 A. 209, 22 B. 988, 25 W. R. 4, it is sufficient if the way is one that may be lawfully used by the public. 10 Cr. L. J. 210 (C), 12 A. L. J. 1024, 20 Cr. L. J. 556 (Pat.), 4 P. L. T. 402.

—there is no warrant for the view that railway land is necessarily a public place to be a subject of dispute under s. 133. There must be a finding that the land encroached upon is or may be lawfully used by the public. 4 Pat. L. T. 402; 1 Pat. L. R. 154; 74 I. C. 1047 24 Cr. L. J. 855 1923 Pat. 540.

—an order for the removal of building *bona fide* erected by a person on land to which he has a claim, in good faith, under a patta, on the ground that it obstructs one railway signal from the view of another, is not legal. 61 I. C. 117 22 Cr. L. J. 389.

—a denial that the path was a public one is equivalent to a claim that it was a private one. 61 I. C. 175 22 Cr. L. J. 351.

—a long user by a private person what is claimed to be a part of the public path may be taken as a *bonafide* claim ousting the jurisdiction of the criminal court while a long user by the public of a place as a part of the public path raises a presumption that the place was relinquished by the owner thereof. 1928 Pat. 268; 9 Pat. L. T. 587 108 I. C. 559 29 Cr. L. J. 422.

—one co-sharer of an undivided share cannot dedicate to the public a way over the common estate without the consent of others. The act must be a concerted act, at one given moment, of all joint owners. 45 A. 656 74 I. C. 849 F. B.

—a private property cannot be converted into a public merely because it looks as though it ought to be so and because to do so would be convenient to a section of the public who have enjoyed permissive user of it. 45 A. 656 F. B.

(4) Nuisance.

—any obstruction on a public road is a nuisance, whether in point of fact it causes practical convenience or not. 23 A. 159; A. W. N. (1901) 130, 23 A. 84.

—the motive of obstruction is irrelevant. 23 A. 159.

—where the inhabitants of one village have placed an unlawful obstruction to prevent the flow of water along its natural channel and the resultant injury affects a large area of cultivated land and a considerable body of persons, the case is one of public nuisance. 9 A. W. N. 355, 34 A. 355, 12 A. L. J. 248; 15 Cr. L. J. 229, 99 I. C. 939; 28 Cr. L. J. 203; 1927 Oudh 122.

—keeping of gaming house is a nuisance if crowds of disorderly persons flock there and cause annoyance to the public, 14 M. 364.

S. 133. (4) Nuisance—*contd.*

—cremation on private land, though not a nuisance, may become one if cremation is allowed to be so performed as to be source of injury, annoyance or danger to the neighbouring people. 25 C. 425 : 2 C W N 113, 24 W. R. Cr. 6.

—no length of time can legalise a trade or occupation which is public nuisance. 16 W. R. Cr. 4 : 7 B. L. R. 499, 4 Bom. L. R. 982, Punj Rec (1883) 31, but that can give to the objections a *bona-fide* character ousting the jurisdiction of the criminal court. 25 C. 278.

—a common nuisance cannot be excused on the ground that it causes some convenience or advantage to the person guilty of it. 13 Ind. C 999

—the working of *Foulders* or rice-husking machine throughout the whole night in a residential quarter is a public nuisance, being injurious to the comfort of the neighbourhood. 9 P. R. 1904 (Cr).

—the creation of a *bund* in a river near to which the public has a prescriptive right of way is obstruction or nuisance. 32 C. 930.

—a. 133 deals with the condition of things at the time when the inquiry is held. If at such times a house or branch of a tree is likely to fall and thereby endanger the life of the public, action may be taken under the sec. But it is not meant to apply to *what may happen at some indefinite time in the future or under quite abnormal circumstances*. Where solid and vigorous branch of a tamarind tree is 16 ft. above the level of the country road it cannot cause any unlawful obstruction within a. 133 and should not be ordered to be cut down especially as a tamarind tree is an object of veneration to many of the Hindus. 22 A. L. J. 436 : 1924 Ali. 667 : 83 I. C. 664, 56 I. C. 446 : 1 Lahore 163

—manufacture of brooks is not in itself injurious to health. 56 I. C. 446 : 1 Lahore 163.

—a noise which is injurious to the physical comfort of the community, is a nuisance within the meaning of a. 133. 32 C. L. J. 42 : 57 I. C. 829 : 21 Or. L. J. 669.

—but it is necessary to take all the circumstances into account, to see that the interference with public comfort is considerable 20 P. W. R. 1911 Cr., 117 P. L. R. 1911 : 12 Or. L. J. 146 : 9 I. C. 891 (34 C. 73 : 5 C. L. J. 10, 17 P. R. 1888, 47 P. R. 1888, 106 P. R. 1888) *Ref.*

—the act of permitting a large stock of bones to remain uncovered in the open air for a long time so as to become rotten and to emit a smell noxious to the people living in or passing by the vicinity, constitutes a public nuisance. 34 C. 73.

—the nuisance must be something that may be removed. 1901 A. W. N. 126.

—although no length of continuance can legalise a public nuisance yet such fact may tend to show that the dispute was a *bonafide* dispute of title. 25 C. 278.

S. 133. (4) Nuisance—*contd.*

—a common nuisance cannot be excused on the ground that it causes some convenience or advantage to one party. 34 A. 345, 13 Cr. L. J. 183

—where the inhabitants of a village place an unlawful obstr-

as the cattle cause obstruction and inconvenience to the public, is within the scope of this sec. 62 I. C 822, 22 Cr. L. J. 582.

—this section gives ample power to make an order prohibiting the discharge from a factory into a river of an affluent which might be injurious to the health of the community which has right to the use of the water in such stream. But there must be definite, scientific and convincing evidence against the accused. 1926 Pat. 506 : 100 I. C. 541, 8 Pat. L. T. 302, 28 Cr. L. J. 317.

—the construction of a latrine by a person in his own land cannot be considered a nuisance and it cannot be removed by a Magistrate but if its user causes nuisance to neighbours the Magistrate may direct the owner to remove the nuisance of the manure only and not the latrine. 1928 All. 128 : 29 Cr. L. J. 233 : 26 A. L. J. 86, 107 I. C. 242.

(5) Jurisdiction.

—a magistrate can deal with existing obstruction and not future ones. 24 W. R. Cr. 10, 83 I. C. 664 : 22 A. L. J. 436.

—the magistrate has jurisdiction under this section where a road, though a private one, is used by a certain class of the public. 19 W. R. Cr. 33 *contra*, 45 A. 656.

—the duty of determining whether a site of obstruction is a public place or private way is cast upon the Magistrate and it cannot be referred to the jury. 4 Lab. 22 : 3 Leh. L. J. 420 : 72 I. C. 617 : 24 Cr. L. J. 457

—the M. has no power to determine whether there was a public way. 7 C. W. N. 117, 28 A. 98.

—in a *bona-fide* dispute between a private individual and the Government as to the right of the former on the ground on which an

—where a M. proceeding under s. 133 came to the conclusion that the channel in question was a public channel and passed orders under s. 3, 139 (1) and 140 (1), held that the M. was not bound

S. 133. (5) Jurisdiction—*contd.*

to inquire that the accused had a *bona-fide* claim of right to the channel and refer the matter to the Civil Court. 28 C. L. J. 211 : 19 Cr. L. J. 947, 6 C. W. N. 886.

—decision on local inquiry without taking evidence is bad. 22 C. W. N. 1054 : 50 I. C. 658, 22 C. W. N. 1171 : 44 C. 61.

—when in proceeding under s. 133 arising out of an alleged obstruction of a way used by the public, the deft. sets up a claim of right which is found by the M. to be made in good faith the Magistrate's jurisdiction is not thereby ousted. 26 C. W. N. 442 : 35 C. L. J. 247 : 49 C. 682 : 23 Cr. L. J. 353 : 67 I. C. 177 : 1922 Cal. 682 F. B., 8 C. W. N. 143 Appr. Other points were decided in the case

jurisdiction.

L. R. 13, 73

—it cannot be said that the moment a *bona-fide* dispute as to title is raised by the defendant, the jurisdiction of the Magistrate is ousted and the Magistrate is bound to stop the proceedings and to refer the parties to a Civil suit. 45 A. 656 : 74 I. C. 849 : 24 Cr. L. J. 817 : 21 A. L. J. 529, 28 A. 89 *not fol.* 49 C. 682 *fol.*

—when the M. finds the claim of private right of way to be *bona-fide* he must give an opportunity to the claimant to establish it in a civil court. Failing his doing so the M. is bound to proceed with the case; this limitation or

562, 26 C. 870, 12 C. 137, 696,

is that the claim of right set up is proper course to follow is to drop jurisdiction to direct the party setting out within a specified time. 24 C.

W. N. 441.

—it is competent to the Magistrate, if he finds that there

353 F. B.

—where there is a *bona-fide* question as to the public nature of the subject of dispute, the question should be left to a civil court for adjudication. But whether there is a *bona-fide* question it is for the Magistrate to decide. 73 I. C. 802 : 24 Cr. L. J. 690.

—the sec. contemplates only an inquiry as to the existence or non-existence of the obstruction complained of and not an inquiry into a disputed question of title. 18 C. W. N. 1148 : 19 C. L. J. 631.

—the M. has no jurisdiction when private path is used by the public permissively. 45 A. 656 : 74 I. C. 849.

S. 133 (5) Jurisdiction—contd.

—where the M. referred the whole case to the jury and the jury returned a verdict that the order was a proper order, but that the road was a private road, it was incumbent upon the M. to determine the latter point and not leave it to the jury. 3 C. L. J. 360. 3 Cr. L. J. 331.

—where the jury returns the paper without any verdict M. may make the order absolute under s. 141 but before doing that he should give the party a notice to show cause and an opportunity to produce evidence as they went. 4 Pat. L. T. 15; 1 Pat. L. R. 164 Cr.; 72 I. C. 956; 24 Cr. L. J. 492, 13 C. W. N. 367 fol.

—in cases of orders relating to public nuisance under ss 133 and 139, and order directing the counter-petitioner to show cause before some other M. has not the effect of divesting the M. who passed the order of all jurisdiction. He may deal with the verdict of the jury elected by the counter-petitioner 37 M. L. J. 313; 1919 M. W. N. 696; 58 I. C. 469.

—when the deft. sets up a class of right which is found by the M. to be made in good faith the M.'s jurisdiction is not ousted thereby. 28 C. W. N. 442. F. B., 8 C. W. N. 143.

—where the public has acquired the right of way the M. is justified in passing order under this sec. 32 C. 930; 2 Cr. L. J. 782, 38 A. 209; 12 A. L. J. 248

—an order prohibiting the use of graveyard is not such an order as can be made under s. 133. 12 C. W. N. 70, 18 Bom. L. R. 554; 18 Cr. L. J. 137; 37 I. C. 489.

—opening a new market by the side of an old one cannot be held to be carrying on a trade or occupation that is injurious to the health or physical comfort of the community; therefore no order can be passed closing the new market. 14 M. L. J. 207; 2 Weir 62.

—s. 133 does not empower a Magistrate to order a privy to be removed, because it is only recently made in any locality. 4 Bom. L. R. 882.

—tanks, wells or excavations cannot be ordered to be filled up, but only fenced. 22 B. 714, 10 W. R. Cr. 27, 1 W. R. Cr. 51.

—the function of the jury is only to determine whether the order of the Magistrate is reasonable or proper. 15 C. 564, 17 C. 562, 25 C. 281, 2 C. W. N. 869, 3 C. W. N. 345, 26 C. 869, 8 C. W. N. 143, 38 Punj Rec. 4, 22 A. 267.

—this section does not empower a M. to order the owner of a house standing apart from a public road on his own compound to repair such a house. 20 A. 501, 12 M. 475, 13 A. 577.

—the obstruction of a drain into which the complainant's sewage falls is not within the provisions of the section. 5 W. R. 58, 1 W. R. 324.

—the M. cannot order the removal of the burning ground but he can only order the removal of the nuisance caused. 25 C. 425.

—the M. can order the removal of a bund but cannot order the reconstruction thereof. 40 C. L. J. 597.

S. 138. (5) Jurisdiction—*contd.*

—the M. cannot order the removal of a building on the ground that it obstructs a street, without evidence. 5 Lah. L. J. 81, 73 I. C. 503 : 27 Cr. L. J. 615.

—the M. cannot order to lop off the branches of an over-hanging tree. A. W. N (1883) 222.

—the existence of an alternative remedy does not deprive a M. of his jurisdiction under s. 133, 32 C. L. J. 42; 57 I. C. 829; 21 Cr. L. J. 669

—in Chap. X *re.* public nuisances in which public interests are involved, there is no provision for reference to arbitration. 62 I. C. 335 : 22 Cr. L. J. 511.

—in a proceeding under s. 133 no order under s. 147 can be proved. 15 C. W. N. 71 (note).

—the M. cannot make a general order prohibiting the public from attending a certain place. 12 C. W. N. 231.

—a grave-yard cannot be prohibited. 12 C. W. N. 70.

—the M. cannot act merely to protect property, some conditions set out in the section must exist. 9 C. 103.

—revival of the proceedings with regard to the same matter, if there were materials, was held legal. 5 C. W. N. 173.

—an unconditional order under the section cannot be questioned by the Civil Court. 6 C. 291, 3 C. L. R. Ap. 3 : 11 W. R. Cr. 434, 14 C. 60.

—where an order has become absolute, the Civil Court can decide whether the place is private property and not public. 15 C. 460 F. B., 6 B. 272, 17 B. 293.

—an order that the party should establish his right in the *bona-fides* of his claim is not a proper order.

—the Court of Revision to s. 395, the High Court is to be referred to. 29 C. 469, and the H. C. cannot set aside an order except for an error of law or exercise of jurisdiction. 1 C. L. R. 486, 9 B. L. R. 417, 1 B. L. R. 449, 45 A. 656.

—no appeal lies against an order passed by a single judge of the H. C. under s. 339, revising an order of the M. 39 M. 537.

—it is not the practice of the High Court to entertain an application in revision against the order of the Magistrate under s. 133 Cr. P. C. unless the party aggrieved has first moved the Sessions Judge under ss. 435 and 438. 48 C. 534, 63 I. C. 410 : 22 Cr. L. J. 650.

—where a conditional order was made absolute after a lapse of years the H. C. treated the final order as resting on no conditional order and reversed it. 23 Bom. L. R. 844 : 22 Cr. L. J. 605 : 62 I. C. 877.

—orders passed under Chap. X, are criminal orders and no Letters Patent appeal lies therefrom. 39 M. 537 : 1915 M. W. N. 240 : 16 Cr. L. J. 349 : 24 I. C. 733.

S 133. (6). Procedure.

—the sec. contemplates only an enquiry as to the existence or non-existence of the obstruction complained of and not an inquiry into a disputed question of title 19 Cr. L. J. 631 : 18 C. W. N. 1148 : 15 Cr. L. J. 515, 17 C. 62, 26 C. 870, 12 C. 137, 696.

—before an order he made, to remove obstruction from a path alleged to be public thoroughfare, Magistrate must decide whether it is so 5 C. 875 - 6 C. L. R. 379, 15 W. R. Cr. 67, 21 W. R. Cr. 64, 25 W. R. Cr. 4, and on evidence, 5 Lab. L. J. 81, 73 I. C. 503 : 27 Cr. L. J. 615, 2 Pat. L. J. 67 : 3 P. L. W. 404 : 18 Cr. L. J. 452 : 39 I. C. 292

—when an order is made under s. 133 Cr. P. C. for preventing obstruction to the public in the use of a way the Magistrate shall ask the opposite party whether he denies the existence of any public right. If the latter does so the M. shall proceed under s. 137 or 138 to inquire into the matter. 10 Lab. 151 : 30 Punj. L. R. 687 : 1928 Lab. 856 29 Cr. L. J. 638.

—an order made under s. 133 Cr. P. C. absolute on the basis of local inspection has been made with and stated that they would the court had inspected the 327 All. 267 : 25 A. L. J. 155 :

—even by consent of parties he based upon information gathered at a local inquiry. 22 O. W. N. 1171 . 44 C. 61, 23 C. W. N. 1054, 11 C. L. J. 114 Fbi.

—decision on local inquiry without taking evidence is bad . 23 O. W. N. 1054 : 50 I. C. 658 : 20 Cr. L. J. 322.

—the fact that one of the parties to proceeding under s. 133 was not served with Magistrate will : previous order. 30 : 31 C. W. N. .

—an order under s. 133 cannot stand if there is no finding that the claim by the petitioner was not made and put forward to good faith 21 C. L. J. 116 : 16 Cr. L. J. 160, 15 C. 564, 17 C. 562, 8 C. W. N. 143, 7 C. W. N. 117, 4 C. W. N. 596, 25 C. 281, 11 C. 8, 8 C. W. N. 143, 16 C. W. N. 90 (note), 10 C. W. N. 845, 31 C. 979 : 9 C. W. N. 72, 3 C. W. N. 345.

—the extent of the encroachment of the house upon the public way should be ascertained and definitely specified in the order and in its absence the order cannot be supported. 21 C. L. J. 116 : 16 Cr. L. J. 160, 20 C. W. N. 1171 - 44 C. 61.

—a sub-divisional M. issuing a conditional rule and referring the matter under the last paragraph of s. 133 (1) to a Deputy M. to record evidence and submit a report, has jurisdiction to make the rule absolute upon that evidence and report. 24 Cr. L. J. 690 : 72 I. C. 802 : *contra* such procedure is bad in law, and it cannot be

S. 133. (6) Procedure—*contd.*

cured even by the consent of the parties. 47 B. 89, 24 Bom. L. R. 807; 23 Cr. L. J. 587 68 I. C. 619

—a Subdivisional Officer who makes a conditional rule under s. 133 may refer the matter to another Magistrate subordinate to him for disposal. It is only when the person against whom notice is issued appears and demands a jury under s. 135 that the matter should be disposed of by the Magistrate who issues the conditional rule and not by any other Magistrate to whom the case might be referred for inquiry. 6 Pat 423, 105 I. C. 238, 1937 Pat 265; 28 Cr. L. J. 910

—where an order is made absolute on materials which are not provided for by the section and in a manner contrary to the express provision of the section no consent of the parties can possibly cure that illegality. 68 I. C. 619; 24 Bom. L. R. 807; 23 Cr. L. J. 587, 1922 Bom. 384,

—where an order is made absolute against a number of persons remove unless all persons are alleged to be jointly responsible for all the obstructions. 44 C. 61, 1928 Lah. 187; 106 I. C. 220; 28 Cr. L. J. 1036 9 Cr. R. 202.

—an order under s. 133 must be such that persons against whom it is directed can learn from its terms what it is that they are to do for the purpose of complying with it. 11 C. L. J. 114.

—a conditional order under s. 133 cannot be cancelled on the mere written statement of the opposite party without taking evidence. 1929 Cal. 21 118 I. C. 863; 30 Cr. L. J. 973.

—when the claim of right set up in answer to a conditional order is based on substantial grounds, the proper course is to drop the proceedings. *The M has no jurisdiction to direct the party to go to the civil court within a specified time* 24 C. W. N. 247; 54 I. C. 487

—the Magistrate cannot refer one of the parties to a civil court without issuing a conditional order under sub-sec. (1); 9 L. L. J. 522; 109 I. C. 354; 1928 Lah. 95; 29 Cr. L. J. 530.

—the Magistrate should refer the party to the civil court as to the *bona-fides* of the claim should be referred to the Civil Court. C. W. N. 845; 4 Cr. L. J. 42, 3 C. W. N. 1086; 42 C. 56, 15 Bom. L. R. 30; 24 Bom. L. R. 13; 24 Bom. L. R. 23

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S. 133. (6) Procedure—contd.

—where a conditional order made under s. 133 was itself too vague and indefinite, the High Court set aside the final order passed under s. 137 and declined to send back the case for retrial on the ground that having regard to the terms of section 137 no useful purpose could possibly be served by sending the case back, for the vice really rested not in the final order but in the conditional order 11 C. L. J. 114 1 Cr. L. J. 152

—but where the M. issued a notice to show cause why the platform obstructing a public thoroughfare should not be removed and then taking evidence ordered the removal of so much of the platform as might obstruct the high way, held that the final order was vague and the case should be sent back for fresh enquiry 86 I. C. 219, 23 A. L. J. 43, 1925 All. 310; 26 Cr. L. J. 731, (44 C. 61, 11 C. L. J. 114) not fol.

—where a conditional order was made under s. 133 and the opposite party denied the claim and was asked to adduce evidence, in the absence of any specific opportunity to adduce evidence under s. 137 order must be set aside, 33 C. W. N. 201; 49 C. L. J. 49; 116 I. C. 384, 30 Cr. L. J. 622 1928 Cal 879.

—where the Magistrate's order was to remove so much of a platform as might obstruct the highway, held, that it was vague order and the case should be sent back for fresh enquiry. 23 A. L. J. 43; 86 I. C. 219; 26 Cr. L. J. 731.

—extent of an encroachment of a house upon the public road should be ascertained and definitely specified in the order. 21 C. L. J. 116; 27 I. C. 224; 16 Cr. L. J. 160.

—it is discretionary with the M. when first taking action to take evidence or not, but the conditional order must be made absolute after taking evidence in the matter of the complaint. 24 C. 395; 1 C. W. N. 217, 6 C. W. N. 548, 11 B. 375, 26 W. R. 271.

—the Magistrate cannot decide whether the *bona fide* claim is barred by limitation. 12 C. W. N. 267.

—the order must be addressed to particular person and not to the public 16 C. 9, 8 A. 99.

—no conditional order can be made. 9 C. 637.

—the magistrate should see that he does not appoint friends and partisans of the applicant. 12 C. L. J. 1241; 16 Cr. L. J. 40; 23 C. 499, 26 C. 869.

—the M. cannot make a conditional order under s. 133 cannot take

—made is
not :
states :

—Inquiry under s. 133 should be like that in summons case. 1927 Oudh 26; 7 A. I. C. R. 34.

—the procedure to be followed in cases regarding public nuisance is as in a summons case and evidence must be recorded. An order based on oral inquiry is illegal, 73 I. C. 503; 24 Cr. L. J. 615, 20 A. L. J. 692, 1922 All. 335, 21 C. W. N. 926; 25 C. L. J. 319.

S. 133. (6) Procedure—contd.

—where after a notice under s. 133 to show cause, the person puts in a statement showing why no order should be passed against him, the M. is to take evidence as in a summons case. The complainant's evidence must first be taken and then that of the other party. When neither party adduces evidence the order cannot be made absolute. 47 A. 341 : 86 I. C. 969 : 26 Cr. L. J. 905 : 1925 All. 614.

—an order under s. 133 and any order under the subsequent section is an order against a particular individual, so as soon as a person against whom an order has been made under chap. X Cr. P. C. dies the order ceases to have effect and if it is necessary to issue another order against his successor in interest separate proceedings must be taken for the purpose. 1938 All. 300. 26 A. L. J. 405 : 29 Cr. L. J. 445 : 108 I. C. 565.

—an order for payment of cost by any party to the proceeding is illegal. 40 C. L. J. 599.

—in enforcing an order under s. 133 the proper procedure to be adopted is that indicated in s. 140 (2). But the costs of the removal of the nuisance must be realised only from those parties to the proceeding who were served with the notice of the orders 44 C. L. J. 211 : 31 C. W. N. 530 99 I. C. 62 : 1927 Cal. 70. 28 Cr. L. J. 30.

—where an order for the removal of a house was made on the ground of its encroachment on the public road but there was no finding that the claim by the petitioners was not made and put forward in good faith, the order was liable to be set aside 21 C. L. J. 116 : 16 Cr. L. J. 160, (15 C. 564, 17 C. 562, 8 C. W. N. 143) Ref.

—the matter regarding public nuisance cannot be referred to arbitration, 62 I. C. 335 : 22 Cr. L. J. 511

—proceeding under s. 133 cannot be referred to a third class Magistrate 50 C. L. J. 291. 1929 Cr. C. 600 : 1929 Cal. 813.

S. 134 (Service or notification of order)

—omission to follow the direction of the section though

the
vent
Punj.

R. 3, 5 W. R. Cr. 4.

—method of service is immaterial. 4 Lah. 224. 5 Lah. L. J. 420 : 72 I. C. 617 : 24 Cr. L. J. 457

S. 135. (Persons to whom order is addressed to obey or show cause or claim jury.)

—the party cannot both show cause and at the same time apply for the jury. 13 C. W. N. 367.

—when the Magistrate finds that the claim of right set up is based on substantial grounds, the proper course to follow is to drop the proceeding. 24 C. W. N. 247.

S. 135. (Persons to whom order is addressed to obey or show cause or claim jury)—*contd.*

—when the deft sets up a claim of right which is found by the Magistrate to be made in good faith, the Magistrate's jurisdiction is not ousted thereby. 26 C. W. N. 442 F. B., 8 C. W. N. 143, *contra*. 1 C. L. J. 434 · 2 Cr. L. J. 349, 15 Bom. L. R. 57; 2 Bom. L. R. 13.

—the jury cannot decide the question of public or private way 3 C. L. J. 360, 10 C. W. N. 845, 31 C. 979, 4 C. W. N. 596, 39 A. 364

—the Magistrate is bound to appoint a jury if so applied and cannot decide the matter on local inquiry. 2 C. L. R. 509, 20 C. W. N. 1171 · 44 C. 61, 23 C. W. N. 1054.

—the applicant is bound by the verdict of the jury. 12 A. 267.

—reasonable opportunity should be given to the opposite party to show cause as contemplated by s. 135 Cl. (b) and to adduce evidence as prescribed by s. 137 (1). 20 C. W. N. 1171; 44 C. 61.

—when the jury fails to perform its duty through no fault of the person against whom conditional order has been passed that person should be given opportunity to show cause and adduce evidence. 4 Pat. L. T. 15; 1 Pat. L. R. 164; 24 Cr. L. J. 492; 72 I. C. 956, 4 Pat. L. T. 13; 73 I. C. 327; 24 Cr. L. J. 583.

—in case of failure to obey order under s. 136, Cr. P. C., the procedure prescribed by s. 140 should be adopted and the costs realised from the parties who had actual notice of the conditional order 31 C. W. N. 530 · 44 C. L. J. 211; 99 I. C. 62; 1927 Cal. 70 · 28 Cr. L. J. 30.

S. 136. (Consequence of his failing to do so.)

—no order can be made absolute unless service is proved. 16 C. 9, 21 W. R. Cr. 86.

—a verbal order to remove the obstruction has not the effect of a final order and is not lawful and the person disobeying is not guilty under s. 188 I. P. C. 16 Cr. L. J. 24

—when once an order has been made absolute under this sec. the party against whom the order is made, cannot go behind it and cannot question the validity of the order. 13 A. 577, A. W. N. (1891) 169, 31 M. 280; 18 M. L. T. 216, P. L. R. 1900 p. 24 (20 A. 501 *Dist.*).

—if the persons against whom the order is made does not appear and show cause and the order is made absolute in a proceeding under s. 188 he cannot go behind the order. 12 M. 475, 20 A. 501.

—an order absolute cannot be questioned even in a subsequent proceeding. 2 P. R. 1900 (Cr.)

—when objections are filed after the time-fixed but before the case is taken up, the Magistrate must hear the party. 10 W. R. Cr. 27.

S. 136. (consequence of his failing to do so)—contd.

—the order must unequivocally prohibit the doing of a thing; if ambiguous, it should be construed favourably to the deft. 16 C. 9.

—a person demanding jury, on order being made absolute, can file suit to declare his exclusive right to the land. 6 C. 291, 15 C. 630 F. B., 6 B. 670, 672, 8 Bom. H. C. R. 94

—when an order absolute under s. 136 passed *ex-parte* is set aside by the M. on the appearance of the opposite party the M. must proceed to record evidence as provided by s. 137. 4 Pat. L. W. 50 : 19 Cr. L. J. 214 : 43 I. C. 790

S. 137. (Procedure when he appears to show cause).

—s. 137 is imperative and mandatory. 21 C. W. N. 926 : 25 C. L. J. 349, 99 I. C. 92 : 27 Punj. L. R. 764, 100 I. C. 371 : 49 A. 475 : 25 A. L. J. 377 : 28 Cr. L. J. 291 : 1927 All. 350, non-observance of the provisions renders a trial bad in law. It cannot be cured by s. 537 Cr. P. C. 49 A. 270 : 1927 All. 267 : 25 A. L. J. 155 : 99 I. C. 415 : 28 Cr. L. J. 159.

—both ss. 137 and 138 are imperatives in their terms. The Magistrate has no discretion in the matter. 13 C. W. N. 367.

—If an accused appears to show cause in pursuance of an order under s. 133, the Magistrate is bound to proceed under s. 137 Cr. P. C., 1 Bom. L. R. 783.

—the Magistrate must make order on evidence. 11 B. 375, 25 W. R. (), 19 C. W. N. 332 : 42 C. 702, 31 L. J. 37 : 764 : 28 Cr. L. J. 60, 25 A. 764 : 99 Cr. L. J. 60 : 27 Punj. L. R. 94 : 28 Cr. L. J. 510 and

no waiver on the part of the party can confer on the Magistrate authority to act in a manner not prescribed by the Legislature. 11 Cr. L. J. 1, 4 Ind. C. 436 : 10 C. L. J. 482, 21 C. W. N. 926 : 25 C. L. J. 349, 20 C. W. N. 1171 : 44 C. 61,

—an *ex-parte* conditional order under s. 133 cannot be made absolute without taking evidence of the complaint. 31 C. W. N. 963 : 104 I. C. 635 : 28 Cr. L. J. 859 : 1928 Cal. 96.

—although the parties consent to abide by the result of the local inquiry by the Magistrate still if the Magistrate fails to record evidence as in summons case his order is bad because the consent of the parties or waiver cannot vest him with jurisdiction to proceed in such manner. 49 A. 270 : 99 I. C. 415 : 25 Cr. L. J. 159 : 25 A. L. J. 155 : 1927 All. 267, 21 C. W. N. 926 *Rel.*

—he cannot decree the case on the result of his own local inquiry. 23 C. W. N. 1054, 21 C. W. N. 926 : 25 C. L. J. 349, 100 I. C. 371 : 1927 All. 350 : 28 Cr. L. J. 291, 49 A. 475 : 100 I. C. 371 : 25 A. L. J. 377 : 1927 All. 350.

—an order under s. 133 cannot even by consent of parties be based upon information gathered at a local inquiry. 20 C. W. N. 1171 : 44 C. 61, 21 C. W. N. 926 : 25 C. L. J. 349.

—the existence of a genuine dispute as to title suitable for decision by a civil court is a sufficient ground within the meaning of s. 137. 72 I. C. 958 : 24 Cr. L. J. 494 : 1923 (Oudh.) 22.

S 137. (procedure when he appears to show cause)—contd.

—where a person against whom proceedings under s. 133 have been initiated sets up title to the property, the proper course for the court is to proceed under s. 137. 49 A. 453; 100 I. C. 374; 1927 All. 384 28 Cr. L. J. 294.

—in taking evidence under s. 137 it is incumbent on the M. to determine whether the claim is *bona-fide* one and if he finds it to be so, he must stop proceeding and give the party time to establish his right in the civil court. 4 Pat. L. T. 402; 1 Pat. L. R. 154; 74 I. C. 1047.

—the M. cannot make the order absolute only on the report of the Teshildar 20 A. L. J. 657; 1922 All. 265.

—where a claim of right raised in answer to a conditional order was found to be *bona-fide* and it was ordered that unless the party sought to establish his right in the civil court *within a limited time*, his *bona fides* was again to be questioned by the criminal court, the M. should not have made the order without taking evidence adduced by one side or the other. 23 C. W. N. 774; 53 I. C. 160.

—in cases of public nuisance an enquiry is obligatory and the M. cannot make his conditional order without taking such evidence as the parties may adduce as in a summons case. 9 O. L. J. 64; 66 I. C. 185, 18 Cr. L. J. 848. 41 I. C. 672, (31 A. 453, 17 M. L. T. 142) *Ref.*

—before an order absolute can be passed under s. 140, a complainant, that is the party who has set the law in motion, has to produce evidence and the opposite party is not bound to produce evidence until this has been done. 11 A. L. J. 931, 22 I. C. 167, 15 Cr. L. J. 23, 6 A. L. J. 685.

—it is not merely necessary to hear the evidence for the defence but the evidence upon which order is to be made must also be recorded. 147 P. L. R. 1901, 24 C. 396, 21 C. W. N. 936; 25 C. L. J. 349

—failure to produce evidence on the part of the accused does not justify the final order under s. 137 until the Magistrate has satisfied himself from evidence recorded that there is an unlawful obstruction. 2 Bom. L. R. 818, 15 Bom. L. R. 57, 2 Bom. Cr. C. 13.

—if the party does not absolve the Magistrate in accordance with s. 137 on evidence recorded, the order is bad. 2 P. L. T. 6, 21 C. L. J. 327; 2 P. L. T. 6, 21 C.

—where a S. D. O. fixed five minutes for the cross-examination of the witness and without coming to any clear finding as to the *bona fides* of the claim set up by the party, passed order under s. 137, the order was bad. 34 C. L. J. 172; 22 Cr. L. J. 412; 62 I. C. 412; 73 I. C. 503; 24 Cr. L. J. 615.

—the Magistrate must compel the attendance of witness; otherwise the final order will be bad. 6 C. W. N. 549.

S. 137. (procedure when he appears to show cause)—*contd.*

—s. 137 is imperative and mandatory and the M. should record evidence. 20 C. W. N. 204 (note); he cannot make order absolute on his own opinion formed by inspection. 17 M. L. T. 142: 27 Ind. C. 767. 16 Cr. L. J. 207.

—in the absence of any specific opportunity to adduce evidence under s. 137 the order must be set aside. 33 C. W. N. 201: 49 C. L. J. 49. 116 I. C. 384: 30 Cr. L. J. 622.

—the Magistrate is not necessarily the Magistrate who made the conditional order but other competent M. to whom the case may be sent under s. 133, 25 C. 278, 9 M. 201.

—the jury have only to try the question whether the Magistrate's conditional order is reasonable and proper. 31 C. 979: 9 C. W. N. 72.

—whether hay-ricks are nuisances must be determined by evidence and not by local inspection. 17 M. L. T. 142. 27 I. C. 767, 11 B. 375, 32 A. 453.

—a Magistrate has jurisdiction under s. 137, Cr. P. C. to pass an order for the removal of certain nuisance from tank either by re-excavating or clearing it or by filling it up. 27 C. W. N. 459, 10 W. R. Cr. 27, 25 C. 425. *Fol.*

—such an order cannot be questioned by the successor in office of a Magistrate. 27 C. W. N. 459

—it is necessary to see that the interference considerable section of tl equitable principle not b:
117 P. L. R. 1911, 34 C. 73:

—proceedings under s. 137 cannot be dropped without taking evidence on the ground of *res judicata*, on opposite party taking the objection in showing cause that the identical way had previously been the subject-matter of inquiry under s. 133, by a court of competent jurisdiction. 19 C. W. N. 332. 28 Ind. C. 799: 42 C. 702: 16 Cr. L. J. 415, 60 I. C. 431: 22 Cr. L. J. 239.

—where the conditional order made under s. 133 was itself too vague and indefinite, the H.C. set aside the final order under s. 137 and refused to send back the case for retrial, on the ground that under the reasonableness or propriety competent to go behind it. 11 J. 213.

—the presence of prostitutes by the roadside, made in them, cannot affect the physical comforts of the passer by. 5 C. W. N. 566.

—where after a preliminary inquiry the M. drops the proceedings the S. J. cannot order a further inquiry. 24 C. 395: 1 C. W. N. 217.

—unless there is no evidence to warrant the finding of fact by the M. the H. C. will not interfere. 7 B. L. R. 516, 12 W. R. 24.

S. 138. (Procedure where he claims a jury).

—both ss. 137 and 138 are imperative in their terms. The Magistrate has no discretion in the matter. 13 C. W. N. 367.

—the reference to the jury is optional with the party but when once made its verdict is final. 14 C. 60.

—prior to appointing a jury the M. should himself determine the question of public nature of the pathway 3 C. L. J. 360, 2 Pat. L. J. 67, 18 Cr. L. J. 452

—the constitution of the jury cannot be changed. 10 C. L. J. 193, 6 C. L. R. 397; 5 C. 875

—the M. must see that he does not appoint friends or partisans of the applicant. 37 A. 26, 26 I. C. 632; 16 Cr. L. J. 40, (23 C. 499, 26 C. 869, 1897 P. R. 4) *Ref.*

—under cl (1) (a) the M. is to nominate the foreman and one half of the remaining members of the jury and in doing so he must exercise his discretion and shall not merely accept the nomination of the complainant. 1929 Bom. 79; 30 Cr. L. J. 785; 31 Bom. L. R. 79, 117 I. C. 333.

—it is not open to the M. to leave the decision of the question of bona-fide claim to the jury appointed under this sec. 2 Pat. L. J. 67; 3 Pat. L. W. 404; 18 Cr. L. J. 452.

—a jury cannot decide on local inspection without taking evidence. 26 C. 869, 6 C. W. N. 886.

—the Magistrate must exercise his independent discretion and will not merely appoint the nominees of the party interested in upholding the Magistrate's order. 21 W. R. Cr. 43, 16 W. R. Cr. 23, 23 C. 499, 26 C. 869.

—the jury has only the Magistrate's conditional order
W. N. 72, 26 C. 869, 4 C. 9 C.

—the jury should
(1901) 30. N.

—all the jurors must jointly act. 11 Cr. L. J. 402; 6 Ind. C. 777.

—a foreman cannot appoint another juror in the absence of one who has fallen ill. 10 C. L. R. 193.

—the foreman cannot extend the time but the M. can. 23 A. 159; A. W. N. (1901) 30.

—the decision of a jury appointed under s. 138 is not a proceeding in a Criminal Court which D. M. can call for and examine and refer to the H. C. under s. 435 Cr. P. C. Rat. Un. Cr. C. 336; Cr. Rnl. 25 of 1887.

—the word "forthwith" in s. 133 must be interpreted in a reasonable way. It merely means that the M. shall appoint a jury as soon as he reasonably can. 4 L. 224; 5 L. L. J. 420; 24 Cr. L. J. 457; 72 I. C. 617.

—where it did not appear from the record that the party was ever told that his objection was overruled and that was to appoint some of the members of the jury and the

S. 138. (procedure where he claims jury)—contd.

merely ordered "cause shown, no jury nominated, the rule made absolute," held that the procedure was irregular and that the order must be set aside and re-trial ordered. 62 I. C. 817 : 22 Cr. L. J. 577.

S. 139. (Procedure where jury finds Magistrate's order reasonable)

—the Magistrate is bound to be guided by the decision of the jury. 12 W. R. Cr. 38, 23 W. R. Cr. 86, he cannot accept the verdict partly. 85 I. C. 357 : 26 Cr. L. J. 517, 1925 Cal. 399 : 40 C. L. J. 597.

—accept the modification of the 12 W. R. Cr. 28.

—by the sec. is a majority among the jurors appointed.

13 C. 275.

—a report of the jurors under s. 133 is defective when any four out of five were present at the time of investigation and such report being illegal the M. should appoint fresh jury. 31 C. L. J. 371 : 51 I. C. 240 : 21 Cr. L. J. 448.

—the juryman should not blindly follow the opinion of his fellows. 25 W. R. Cr. 4.

—a jury is only to consider whether the order made by the M. is reasonable and proper and cannot determine the rights of the parties. 5 C. 875 : 6 C. L. R. 379, 31 C. 979 : 9 C. W. N. 72, 3 C. W. N. 345, 21 W. R. Cr. 10, 60, 64, 10 C. W. N. 845, 26 C. 169 : 30 A. 164, 4 C. W. N. 596

—where the majority of the jury were against the order, the order of the M. making the conditional order absolute upon the report of the jury was neither reasonable nor legal. 5 C. W. N. 566.

—when there is a denial of the public right the Magistrate should inquire into the matter and come to a conclusion under s. 139 (a) and on its result would depend the question whether he should stay proceedings or should proceed under s. 137 or 138. 30 C. W. N. 648 : 96 I. C. 126 : 27 Cr. L. J. 878.

—it is not competent to the Magistrate to leave to the jury the decision of the question whether a path-way is public or not and whether the claim is *bona fide* or not. 10 C. W. N. 845 : 4 Cr. L. J. 42, 2 Pat. L. J. 67 : 3 Pat. L. R. 404 : 18 Cr. L. J. 452, 3 C. L. J. 360, *Contra*, 30 A. 364,

—a Magistrate acting under this section cannot rely on a conviction of the person under s. 283 I. P. C. in respect of the same matter. 3 C. L. J. 360 : 3 Cr. L. J. 331.

—a Magistrate cannot direct what is to be done in case of future obstruction. 21 W. R. Cr. 10

—a Magistrate cannot pass order relying on the Police report. 3 C. W. N. 345.

—a person applying for a jury is bound by their verdict. 1900 A. W. N. 180, 30 A. 364.

S. 139. (Procedure where jury finds Magistrate's order reasonable)—contd.

—a M. cannot split up the verdict of the jury so as to give him jurisdiction to deal with the matter. 40 C. L. J. 597; 85 I. C. 357; 26 Cr. L. J. 517; 1925 Cal. 399.

—part acceptance of jury's verdict is not justified. 85 I. C. 357; 26 Cr. L. J. 517; 1925 Cal. 399; 40 C. L. J. 597.

—an order of the M. rescinding a former order made by him under s. 139 is not *ultra vires* and is perfectly valid. 18 Cr. L. J. 305; 38 I. C. 417.

—the report of the jury under this sec. containing some direction to be carried out by the parties, which has been adopted by the M. can only be enforced in the manner provided in s. 140 (2). Such report cannot by itself constitute a contract between the parties so as to give rise to natural rights and obligations. 18 Cr. L. J. 305; 38 I. C. 417.

refused to
ing under
14 A. 575:

S. 139 A. (Procedure where existence of public right is denied)

N. B.

By the introduction of this new sec. provision has been made for the stay of the proceeding, under certain circumstances, until the decision of the civil court.

—after notice is issued under s. 133, it is the duty of the

—this sec. contemplates an inquiry by the M. himself. He cannot delegate his power to make an inquiry as to the existence of a public way to a Subordinate M. If he does so the procedure is not merely irregular but illegal. 34 C. W. N. 228.

—the M. has the absolute discretion to decide whether materials are sufficient for not deciding questions in criminal Court. 27 A. L. J. 385; 116 I. C. 786; 30 Cr. L. J. 670; 1929 All. 220.

—but where a notice under s. 133 was issued and the opposite party filed a written statement admitting that the river in question was a public one but he did not obstruct and the Magistrate, thereupon, did not put the necessary questions under s. 139 A. held that s. 139 A. did not apply and at any rate the omission of the M. to comply with the same was mere irregularity which was curable by s. 537 Cr. P. C. 33 C. W. N. 748; 1929 Cal. 507.

—the above provision of this section is imperative, so if the M. does not comply with that, order under s. 133 should be set aside. 23 A. L. J. 187; 1925 All. 311; 86 I. C. 809; 26 Cr. L. J. 873; 33 C. W. N. 209; 49 C. L. J. 49; 30 Cr. L. J. 622; 116 I. C. 384.

S. 139 A. Procedure where existence of public right is denied.—*contd.*

—s. 139 A. is imperative. It does not authorise a M. to look into the question of title and decide for himself whether the accused's case is or is not true. All that he is to see is whether there is any reliable evidence in support of such denial; if there is some reliable evidence in support of the denial, the proceedings have to be stayed, 93 I. C. 697; 24 A. L. J. 361; 27 C. L. J. 473, 1926 All. 390.

—the M. must fix the period of stay and must have the power to dismiss the application if the matter is not decided by the civil court. 1929 All. 709; 1929 Cr. C. 293

Cal 144; 1930 Cr. C. 144.

—when the M. stays proceedings under this section they remain stayed until decision by a competent Civil Court and there which party
Lab. 227.

and in dispute and leave the parties to have their rights decided in civil court. 81 I. C. 904; 25 Cr. L. J. 1050; 1923 Cal 268, 42 C. 158, 114 I. C. 782. 1929 Oudh 85 30 Cr. L. J. 360.

—where the party obstructing the right of way produces reliable evidence in support of his denial of the existence of right of way by producing the revenue records the M. is bound to stay proceedings under this section. 100 I. C. 119. 28 Cr. L. J. 247; 1927 Lah. 745.

—the section requires firstly, that the party shall appear before the M. and deny the existence of public right in question, secondly, that he shall produce some reliable evidence and thirdly, reliable evidence supporting the denial. satisfied Magistrate's jurisdiction requires evidence and not proof of The Magistrate cannot weigh the evidence to determine on which side the balance leans it is sufficient if the evidence is not false. 91 I. C. 41; 4 Pat. 783; 1926 Pat. 170; 27 Cr. L. J. 9, 29 Cr. L. J. 254; 1928 Lah. 664; 107 I. C. 485.

—reliable evidence is evidence of reliable persons. 107 I. C. 483; 29 Cr. L. J. 254; 1928 Lah. 664.

—when the nuisance or obstruction is admitted or proved terms whether the claim
V. N. 886.

he bonafides of the denial; in support of it is reliable I. C. 786; 30 Cr. L. J. 670.

S. 139 A. Procedure where existence of public right is denied.—*contd*

—where an order is made for the removal of obstruction from particular settlement and no objection is raised, the order is not void as being vague or being incapable of being carried out, 33 C. W. N. 748 : 1929 Cal. 507.

S 140 (Procedure on order being made absolute).

—in enforcing an order under s. 133 Cr. P. C. the proper procedure to be adopted is that indicated in s. 140 (2). But the costs of the removal of the nuisance must be realised only by the proceeding against those parties to the proceeding who were served with the notice of the order 44 C. L. 3 211.

—the objector to the verdict of a jury must give the Magistrate *prima facie* grounds for his objection. 23 W. R. Cr. 15.

—final order should be passed by the Magistrate who made the order absolute. 9 M. 20, 25 C. 278, 2 Weir 61.

—the accused is liable for any disobedience to the lawful order irrespective of any relation to the property. 12 M. 475.

—a Magistrate is not warranted in convicting a person for disobedience of an order to abate local nuisances when appeal is pending 2 B. H. C. R. Cr. 384

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—whenever the time fixed by an order under s. 133 has been allowed by the person against whom the order was made to pass by without compliance or protest he may be proceeded against at once under s. 188 I. P. C. without further notice under this section 12 M. 475, 13 A. 577, 51 M. 280.

—although burning ghat or cremation ground may not in itself be a nuisance within the meaning of Cl. 2, s. 133 still a M. will have jurisdiction under this Cl. If it is shown that such a ghat or ground is in such an offensive state or that the cremation is carried on upon it in such an offensive manner as to be a source of injury, danger or annoyance to persons living in the vicinity. 25 C. 425 : 2 C. W. N. 113, 19 M. 464, 19 W. R. 309, 12 C. W. N. 70.

—a M. has jurisdiction to pass an order for the removal of certain nuisance from tank, either by re-excavating or clearing it or by filling it up 27 C. W. N. 459 : 72 I. C. 77 : 24 Cr. L. J. 317. 1923 Cal. 589, 10 W. R. Cr. 27, 25 C. 425 *fol.*

—such an order cannot be questioned by the successor in office of the M. 27 C. W. N. 459 : 72 I. C. 77 : 24 Cr. L. J. 317 : 1923 Cal. 589.

S. 141. (Procedure on failure to appoint jury or omission to return verdict).

—when jury failed to return their verdict and the Magistrate made the order absolute without appointing a fresh jury asked by the party, the M. did not exercise a proper
12 C. W. N. 1047.

S. 141. (procedure on failure to appoint jury or omission to return verdict) -contd.

—where the jury which was duly constituted in connection with the removal of a public nuisance failed to return a verdict within the time allowed and the Magistrate inspected the locality and passed order, the order was perfectly legal. 1926 All 658: 96 I. C. 655: 24 A. L. J. 165: 27 Cr. L. J. 981. Where the jury fails to return a verdict within the time allowed in accordance with law the Magistrate may pass such orders as he thinks fit. *Same case.*

—when the jury return the paper without any verdict, the M. may make the order absolute, but before doing so he should give notice to the party to show cause and an opportunity to produce evidence. 4 Pat. L. T. 15: 1 Pat. L. R. 164 Cr.: 72 I. C. 956: 24 Cr. L. J. 492, 4 Pat. L. T. 13. 1 Pat. L. R. 22: 73 I. C. 327: 24 Cr. L. J. 583.

—if upon the failure of the jury to return the verdict, the petitioner did not take any step to move the M. to take evidence on their behalf the M. was justified in making the order absolute. 13 C. W. N. 367.

—when the majority of the jurors perversely refuse to act, the M. can discharge them and appoint a new jury. 44 A. 575.

S. 142, (Injunction pending inquiry).

—an injunction under this sec can be issued only when there is imminent danger or fear of injury of a serious kind to the public 21 W. R. 86.

—no injunction can be issued under this sec. when the danger has passed away 1 W. R. 8.

S. 143. (M. may prohibit repetition or continuance of public nuisance).

—the section contemplates an order addressed to a particular person. 8 A. 99, 2 W. R. 32.

—dropping proceeding under s. 133 and passing order under this sec. without drawing up a fresh proceeding are bad. 20 C. W. N. 183 (note).

—this sec. enables the M. to prevent the continuing of public nuisance. 19 M. 464.

S. 144. (Power to issue order absolute at once in urgent cases of nuisance or apprehended danger).

Sub-headings of notes.

- (1) Applicability of the section.
- (2) Jurisdiction.
- (3) Rescission or alteration of order under, Sub-sec. (4).
- (4) Procedure.
- (5) Evidence.
- (6) When *ex parte* orders under s. 144 can be made.
- (7) Duration and extension of period.
- (8) Disobedience to an order under s. 144, effect of.
- (9) Appeal and Revision.

S. 144. (1) Applicability of the section.

—this sec. relates to the passing of provisional order to tide over temporary emergencies and in cases where immediate prevention or speedy remedy is desirable. 25 M. L. J. 370 : 14 Cr. L. J. 589 7 C. W. N. 143, 11 C. W. N. 79, 25 C. 852, 5 C. 7, 1 Pat. L. R. 223.

—this sec. relates to the provisional order to tide over temporary emergencies and in cases where "immediate prevention or speedy remedy is desirable." The H. C. is empowered to prevent the evasion of law by a M. who under the shelter of this sec. assumes the jurisdiction to prohibit persons by permanent injunction from taking possession throughout an indefinite period by arbitrary and successive renewals of orders. 25 M. L. J. 370 : 14 Cr. L. J. 589, 21 I. C. 381, 2 C. W. N. 143, 11 C. W. N. 79, 5 C. 7, 25 C. 852, 27 M. L. J. 628, 13 C. W. N. 195, 69 I. C. 369, 29 C. W. N. 411, 1919 M. W. N. 872, 2 C. W. N. 422, 11 C. W. N. 223.

—when the necessary conditions are present an order under this sec. cannot be impugned as without jurisdiction merely because it was arbitrary. 1929 Pat. 714 : 1929 Cr. C. 586.

—an order under this sec. which is in the nature of temporary injunction intended for emergencies, cannot be utilised in subsequent proceedings between the parties as substantive evidence of possession. 81 Ind. C. 335 : 5 P. L. T. 656 : 1925 Pat. 29.

—s. 144 is not intended to restrict the liberty of an individual breach of the peace. In cases immediate step under this sec. L. J. 1178, 85 I. C. 656 : 28 Cr. L.

—s. 144 is not intended to restrict the liberty of an individual if there is no apprehension of a breach of the peace on account of any act to be done by him. 1924 P. H. C. C. 262 : 62 I. C. 42 : 25 Cr. L. J. 1178.

—when the breach of the peace is anticipated action should be taken under this sec. against the potential law-breakers and not against the peaceful citizens who are likely to be molested by the former. 100 I. C. 825 : 1927 Lah. 430 : 28 Cr. L. J. 345.

—an order under this section has not the effect of disturbing either title or possession though it may prevent and does prevent the exercise of the rights which a person in possession would otherwise be entitled to exercise during the continuance of the order. 64 I. C. 572 (c).

—if the party applying had a proper remedy in the Civil Court, Criminal Courts should not assume jurisdiction. 85 I. C. 656 : 26 Cr. L. J. 560, 50 A. 414 : 105 I. C. 815 : 1928 All. 14 : 28 Cr. C. L. J. 991.

—when the nuisance complained of has existed for a great length of time practically without any complaint, it cannot be treated as an urgent case of nuisance or apprehended danger within s. 144. The sec. applies to a temporary remedy to mend an emergency. 22 Cr. L. J. 521 : 62 I. C. 409.

S. 144. (1) Applicability of the section—contd.

—in case of dispute between two sets of Mohamadans as to the use of mosque, order under this section may be passed. 24 M. 262 : 2 Weir 611

—order may be passed restraining a certain body of people from exercising the rights of Melvaramdar, in relation to certain lands. 1914 M. W. N. 169 : 15 C. L. J. 145.

—this section applies to all temporary orders in urgent

1913 M. W. N. 1003 : 14
t 223

ent cannot be made under
918, 16 C. 80, 8 C. L. R. 231.

ry measure at his disposal

to uphold the decisions of the Civil Courts declaring civil rights and resort to s. 144 Cr. P.C. only when there is no time or opportunity for any other course. 1927 Mad. 368 : 100 I. C. 709 : 28 Cr. L. J. 325 : 25 L. W. 375 : 52 M. L. J. 298

—orders under this sec. cannot be used to deprive the citizens of lawful rights declared by competent courts. Where the Hindus obtained a decree from the Civil Courts establishing their rights to take procession with music by the side of mosques, order forbidding the Hindus to conduct a procession is illegal. 1927 Mad. 611 : 28 Cr. L. J. 509 : 101 I. C. 893 : 52 Mad. 651.

—the section does not apply to disputes relating to collection of market dues, 23 W. R. Cr. 57, or to private dispute between two persons relating to a path, 19 W. R. Cr. 6, or for regulating boat traffic at a landing. 25 C. 852 or to prevent pecuniary loss, 13 C. W. N. 188, or to rebuild a house in ruins or decay, 17 A. 485 F. B. or to interfere with the execution of the decrees, 17 A. 485 F. B. or to forbidding raiyats from cutting the crops they have sown, 8 C. W. N. 373, or to forbidding music when any procession is passing a certain place of worship, 2 M. 140, 6 M. 203, or to dispute relating to land 1 Pat. L. R. 223.

—an order directing a party to open a channel in his own land is not an order under s. 144 (2). Where a dispute can be settled by the Civil Court and there is no apprehension of breach of the peace the M. cannot interfere under s. 144 (2), 15 Cr. L. J. 291 : 23 I. C. 499, 4 M. 121 Fd. (13 I. C. 1900 : 39 C. 560) Diss.

—s. 144 is ordinarily to be used in cases of urgency and should not be allowed to take the place of any other provision of the law which might have appropriately be applied. 38 C. 876 : 13 Cr. L. J. 126.

—order directing not to interfere with certain temple can be made. 24 M. 45, 262, 15 M. 402

—this section does not apply where there is a civil court decree. 6 C. W. N. 466, 17 A. 485 F. B., & C. W. N. 572, but see 51 M. 1006 : 1928 M. W. N. 615 : 1928 M. and. 1049 : 112 I. C. 863 : 30 Cr. L. J. 31 : 35 M. L. J. 442 F. B.

—if a Magistrate acts under s. 145 and attaches the disputed property, he acts more effectually than by an order under s. 144.

S. 144, (2) Jurisdiction—contd

—order cannot be renewed (7 C. W. N. 140) even by adding parties, 29 C. W. N. 411.

—successive extensions of an order under s. 144 Cr. P. C. are invalid but they can be supported as fresh orders. Such successive orders may amount to an abuse of the process of the court specially when the Civil Court has passed an order of temporary injunction against one party. 1922 M. W. N. 612 : 16 L. W. 452, (27 M. L. J. 628, 22 M. L. J. 251 : 20 C. W. N. 758) Ref.

—time cannot be extended by passing successive orders. 13 C. W. N. 195, 11 C. W. N. 79, 5 M. L. T. 96, 25 M. L. J. 370 : 21 I. C. 381, 69 I. C. 369 1923 M. 15, 27 M. L. J. 628, 20 C. W. N. 758, 29 C. W. N. 411.

—where proceedings are initiated under s. 144 with regard to land the possession of which is honestly disputed the Magistrate would be acting properly in converting the proceedings into those under that section 3 Pat. L. T. L. J. 200 : 1929 Pat. 46 : 30 Cr.

proceeding under s. 145 is to be drawn, the M. cannot proceed under this section. 19 Cr. L. J. 869.

—In spite of the Police report the M. should exercise his own judgment as to the likelihood of the breach of the peace. 33 C. 33, 11 C. W. N. 835.

—jurisdiction under s. 144 primarily depends on the urgency of the case and the statement of the M. that he considered the danger to be imminent is not sufficient to give him jurisdiction if the facts set out by him show that really there was no urgent need.

of a to restrain from management
and no other person is partly legal
C. or 92, 15 Cr. L. J. 145 : 22 Ind.
27 Dist.

—every person is ordinarily entitled to exercise all rights of ownership on his own property and the holding of a *hat* on his property is not itself a wrongful act. 26 C. W. N. 663 : 35 C. L. J. 397.

—a magistrate cannot issue an injunction preventing persons from holding as *hat* on different days on his own land, $1\frac{1}{2}$ miles from the old *hat* 19 C. W. N. 248, 31 C. 990, 11 C. W. N. 223, 1 W. R. 22, 14 W. R. 46. F. B., 18 W. R. 47, 22 W. R. 24, 4 C. L. R. 410.

—but he can pass an order if a rival *hat* on the same days. 55 C. 590 : 47 C. L. J. 452 : 1928 Cal. R. 434 F. B., 23 C. W. N. 141 : 23 Cr. 268 : 23 Cr. L. J. 391 : 67 I. C. 205, 14 C. W. N. 234, 4 C. W. N. 226 Contra. 13 Cr. L. J. 511 : 25 Ind. C. 655.

—s. 107 Cr. P. C. is the proper sec. applicable to *hat* dispute. 11 C. W. N. 79, 26 C. W. N. 663 : 35 C. L. J. 396, but it is not the only course, the Magistrate may proceed under s. 144 also. 55 C.

S. 144. (2) Jurisdiction—*contd.*

1077 : 32 C. W. N. 613 47 C. L. J. 452 : 1928 Cal. 446 : 29 Cr. L. J. 423 108 I. C. 590

—an order can only be issued to the public generally *when frequenting or visiting a particular place*. An order directing the public in general to abstain from attending a *hat* is bad since it is not until the public attends the *hat* that the order can be binding on them. 29 C. W. N. 411 86 I. C. 810 : 1925 Cal. 625 : 26 Cr. L. J. 874.

—where an order of a D. M. under s. 144 is directed against *all and sundry* persons generally and does not specify the time during which it purports to be in force the order is *ultra vires*. 1919 M. W. N. 872 20 Cr. L. J. 755 : 53 I. C. 483.

—a general order issued by a D. M. to the effect that no person should sacrifice or caused to be sacrificed any cow or bullock within a certain specified boundary and period is a legal order. 16 Cr. L. J. 190 10 O. C. 70. 27 I. C. 670.

—order under s. 144 asking the public not to remove dogs in carts was held to be without jurisdiction in as much as it was directed neither to a particular individual nor to the public generally when frequenting or visiting a particular place. 16 Bom. L. R. 684 : 16 Cr. L. J. 98 27 I. C. 146.

—once the M. passes his final order he cannot make any order with respect to the sale of property kept in custody. 57 I. C. 817. 21 Cr. L. J. 657.

—an order restraining a person from doing an illegal act which may lead to a breach of the peace is a general direction and without jurisdiction. 10 C. W. N. 176 (note), 16 Bom. L. R. 691 2 Bom. Cr. C. 940 but a general order prohibiting cow-killing 670 : 18 O. C. 70.

of crops between Zaminder and
32 C. 151.

—a magistrate can stop a procession under this sec when the force at his disposal is sufficient. 15 Cr. L. J. 30 : 22 Ind. C. 174.

—but the mere fact that procession is a luxury, is not a sufficient ground for passing an order under s. 144. 15 Cr. L. J. 30 : 22 I. C. 174.

—where the Hindus obtained a decree from the Civil Courts establishing their right to take procession with music outside the mnsques subject to certain condition as to time and on the application to the Magistrate by the Hindus for permission to take procession as per the decree the Magistrate declined to give that permission and an order was passed under s. 144 Cr. P. C. forbidding the Hindus to conduct a procession, on the ground that there was likelihood of rioting and bloodshed, held that the order was

S. 144. (2) Jurisdiction—*contd*

—an order directing the police to see that a person may be allowed to go to a land, cut the crop without hearing another person who claimed the land and crop as being in his possession, is *ultra vires*. 2 Pat. L. T. 455; 61 L. C. 794; 22 Cr. L. J. 442, (5 C. W. N. 391, 3 C. W. N. 627, 6 C. L. J. 127, 9 C. W. N. 125) *Ref.*

—an order for removal of the disputed article into the custody of the court and there to remain for two months, is without jurisdiction. 12 C. W. N. 1044.

—where a *bund* was erected in the bed of a river and the Magistrate afterwards issued a notice under s. 144 restraining the second party from obstructing the flow of water into a canal it amounted to an order to remove the bund and hence was without jurisdiction. 1929 Pat. 523; 1929 Cr. C. 283.

—no order can be passed by the Cr. C. as to the question of right to bring an idol from one place to another. 8 C. W. N. 376.

—a magistrate cannot try an accused person for disobedience of an order passed by himself. 24 M. 262; 2 Weir 611, 10 B. H. C. 424, 1914 M. W. N. 169; 22 Ind. C. 721. 15 Cr. L. J. 145.

—a magistrate is not empowered to stop prayers in a mosque to avoid breach of the peace. 26 C. W. N. 904.

where there is no bona fide dispute as to possession an order
29 Pat. 415; 1929 Cr. C.

identical observation as to
ig an order under this
orce of an order under s.
Cr. L. J. 1229; 1925 Pat.

(3) Rescission or Alteration of order under sub-sec (4).

—an application for rescinding or modifying *ex parte* orders should be disposed of as quickly as possible but it is not illegal to put off an inquiry for a reasonable time within two months. 11 C. W. N. 79.

or alter an order made by
o such M. at all to direct
2 Pat. L. T. 651; 64 L. C.
Cr. C. 385; 1929 Cal. 751.

—although under the revisional power a District M. is entitled to set aside the order of a subdivisional M. made under s. 144 the former cannot direct the latter to draw up proceeding under

S 144. (3) Rescission or alteration of order under sub-sec. (4)—*contd.*

s 145, the proper course being to make a reference to the High Court 33 C. W. N. 723 1929 Cal. 751 : 1929 Cr. C. 385

—the power of a M. to rescind an order under sub-sec (4) need not be confined to cases where there has been a change of circumstances since the original order was made. If the M. has power to rescind an order previously made by himself or his predecessor or subordinate under the section because the circumstances no longer require it to remain in force, he should equally have power to rescind it if he is satisfied *that it never ought to have been made*, 3 Pat. L. T. 573 : 1 Pat. L. R. 2 : 1922 Pat. 241 : 68 I. C. 149 23 Cr. L. J. 549 F. B. 2 P. L. T. 650 *overruled*

—sub-sec. (4) contemplates only a change of the notices of
 " against whom order
 " of the Deputy M. by
 " rty other than against
 " ute 3 Pat. L. J. 287 ;

49 I. C. 76.

—where the Dt Magistrate on the application of the opposite party set aside the order of the Sub-divisional Magistrate made under s. 144 the order of the Magistrate was one rescinding the order of the Sub-divisional M. under s. 144 (4). 29 Cr. L. J. 478 : 109 I. C. 126.

(4) Procedure.

—before making an order the M. should hold an inquiry and determine which party has the legal right. Ret. Un. Cr. 967.

—when the Police report shows no likelihood of breach of the peace it should not be the basis of proceedings under s. 144 or 145. 11 C. W. N. 835.

—an order once quashed cannot be revived without fresh proceedings. 8 C. 580.

7 C. W. two months.

— 3 M. 354.

— judicial proceeding. 19 M. 18.

—a Magistrate cannot pass a final order under this sec. after holding a local inquiry behind the back of the parties and taking statements of—
 statements only be-
 proceeding. 7 Pat. 269 :

and vague. 11 C. W. N.
 of the community. 8 A.

—an order which does not state any facts relating to the case in order to show that there was any justification for making the order, is bad in law. 1924 P. 767 : 82 I. C. 42 : 25 Cr. L. J. 1178, 38 C. 876, *contra*. 18 Cr. L. J. 892 : 41 I. C. 1004 (c), 13 C. W. N. 188 *Ref.*

S. 144. (4) Procedure—*contd.*

—if inspite of order under this sec. there remains apprehension of a breach of the peace, proceeding should be taken under s. 107. 19 Cr. L. J. 356 : 3 P. L. J. 130.

—in a proceeding under Chap. XII the M. should distinctly indicate under what section of the Code he passes the proceedings. 18 Cr. L. J. 295 : 38 I. C. 295.

—when an order under s. 144 has expired by effluxion of time the H. C. would not adjudicate on the merits of the order or annul it in revision. 47 M. L. J. 439 : 1924 M. W. N. 675 : 82 I. C. 472.

—an order passed without issuing any preliminary notice
 them is illegal
 it has lapsed.
contra. no preliminary notice is necessary before passing final order under s. 144 Cr. P. C., 1928 Mad. 1108 : 1928 M. W. N. 779 : 55 M. L. J. 621 : 52 M. 69 : 113 I. C. 279 : 30 Cr. L. J. 119.

—a vague and indefinite order which does not state any facts relating to the case or does not define the limits within which it is to operate is bad in law. 82 Ind. C. 42 : 1924 Pat. 262 : 25 Cr. L. J. 1178.

—an *ex parte* order on *ex parte* enquiry declaring a road to belong to the opposite party is illegal and contrary to s. 147. 5 P. L. T. 419 : 2 Pat. L. R. 209 : 77 I. C. 807.

—where proceedings are initiated under s. 144 with regard to land the possession of which is honestly disputed, the M. would be acting properly in converting the proceedings into those under s. 145 and making an order under the latter section. 3 Pat. L. T. 570 : 65 I. C. 856 : 1922 P. 557 : 23 Cr. L. J. 200, 7 Pat. 269.

(5) Evidence.

—in coming to a decision as to who is in possession under s. 144 or 145, the M. is entitled to rely on the documentary evidence as to title to corroborate the oral evidence as to possession, even if the oral evidence were not quite satisfactory. 1922 M. W. N. 12 : 65 I. C. 538 : 23 Cr. L. J. 197.

—permission delivered by Civil Court must be maintained. 1 Pat. L. T. 81 : 57 I. C. 95.

—civil court decrees must prevail. 17 A. 485, 32 C. 154, 1923 M. W. N. 612 : 23 Cr. L. J. 689, 6 G. W. N. 466, 2 C. W. N. 572.

(6) When *ex parte* orders under s. 144 can be made.

—in case of emergency notice should be dispensed with and order passed *ex parte*. 27 C. 785, 2 C. W. N. 747, 19 M. 18, 8 M. L. T. 180 : 7 Ind. C. 343 : 11 Cr. L. J. 449, *contra.* 84 Ind. C. 324 : 2 Pat. L. R. 193 Cr. : 1924 P. 703.

—a M. is justified in passing an *ex parte* order under sub-sec (2), immediately on receiving a police report, if he is satisfied that immediate action is necessary. 11 O. L. J. 54 : 77 I. C. 721 : 25 Cr. L. J. 433.

S. 144. (6) When *ex-parte* orders under s. 144 can be made—contd.

—it is not proper for a M. to postpone the hearing of an *ex-parte* order which has been challenged, from time to time until about the termination of the force of the order. Such matters ought to be disposed of quickly. 26 C. W. N. 663: 35 C. L. J. 397.

—an *ex-parte* order passed under a 144 (2) can be revoked or altered as provided in sub-sec. 4, 11 O. L. J. 54: 77 I. C. 721: 25 Cr. L. J. 433.

—a M. should remember that there is a revisional authority over them and should indicate with reasonableness the materials on which they conclude that there was an emergency to justify the passing of the *ex-parte* order affecting the liberty of persons. 22 M. L. T. 323: 1917 M. W. N. 724: 43 I. C. 88, 30 M. 548, 6 M. 203, 25 M. L. J. 370, 2 C. W. N. 747, 8 M. L. T. 180.

—where petition was put in under this section claiming a right of easement over a road and asking for an order on the opposite part M. . . . but the inquiry was a party, the . . . Cr. L. J. 455, 1924 Pat. 717 5 Pat L. T. 419.

(7) Duration and extension of period.

—time cannot be extended by passing successive orders. 13 C. W. N. 195, 11 C. W. N. 79, 5 M. L. T. 96, 25 M. L. J. 370: 21 Ind. C. 381, 69 I. C. 369: 1923 M. 15, 27 M. L. J. 628: 20 C. W. N. 758, 29 C. W. N. 411, 1922 M. W. N. 612: 23 Cr. L. J. 689.

—successive orders are invalid though they can be supported as fresh orders. The Criminal Court should respect the opinion of the Civil Court. 1922 M. W. N. 612: 23 Cr. L. J. 689, (27 M. L. J. 628: 22 M. L. J. 251, 20 C. W. N. 758) *Ref.*

—when no time is specified in the order it must be presumed to remain in force for 2 months. 11 C. W. N. 942, 34 C. 897: 8 C. L. J. 186, 2 C. W. N. 422, 7 C. W. N. 140, 13 C. W. N. 195, 11 C. W. N. 223.

—the order cannot be revived after the lapse of two months. 7 C. W. N. 140, 1913 M. W. N. 1003: 27 M. L. J. 628.

—an irrevocable order cannot be made. 32 C. 145, 5 C. 7 F. B. 104, 115, 5 B. L. R. 131.

—an order in the nature of a permanent injunction prohibiting a series of acts for an indefinite term is to be construed to last for two months. 1919 M. W. N. 872.

—when the local Government extends the period of duration of an order, grounds of extension need not be stated nor the extension need be limited to any definite period. 45 A. 526: 73 I. C. 801: 24 Cr. L. J. 689.

—the period during which an order under this sec. remains in force is two months and it cannot be extended by the M. beyond that period. To draw up the same order once more merely adding to the parties affected is an attempt to evade the provision of cl. (b), and is illegal if the total period exceeds two months. 29 C. W. N. 411: 86 I. C. 110: 1925 Cal. 625: 26 Cr. L. J. 874.

S. 144. (7) Duration and extension of period—contd.

—renewing order is in effect extension of order and hence one passed without jurisdiction. 1913 M. W. N. 1003; 27 M. L. J. 628; 14 Cr. L. J. 638.

—if inspite of order under this sec there remains apprehension of the breach of the peace, proper course is to pass order under s 107 and not a fresh order under this sec. 19 Cr. L. J. 365; 3 P. L. J. 130.

—an order under this section being operative only for two months need not be set aside after that period. 88 I. C. 845; 1925 Pat. 514; 6 Pat. L. T. 746; 26 Cr. L. J. 1229.

(8) Disobedience to an order under s 144, effect of.

—order under the section is a preventive order and disobedience to it amounts to an offence under s. 188 I. P. C. 5 C. W. N. 329, 10 B. L. R. 434. 18 W. R. Cr. 47 F. B., 20 W. R. Cr. 53, 5 C. 7 F. B.

—disobedience to an order without jurisdiction is not punishable under s 188 I. P. C. 9 C. W. N. 392, 10 C. W. N. 246

—disobedience to an order under this sec. is not punishable under s. 188 I. P. C. 9 C. W. N. 392, 10 C. W. N. 246.

—disobedience to an order under this sec. is not punishable under s. 188 I. P. C., without evidence as to the likely result of the disobedience of the order. 4 C. W. N. 226, 32 C. 793, 8 C. W. N. 781; 31 C. 390.

... sufficient to prove that the accused disobeyed the order and that the disobedience was such as caused or was likely to cause the breach of the peace or other danger or ... 131.

—to convict under s. 188 I. P. C. for disobedience to an order under s. 144 Cr. P. C. the prosecution has to prove not merely that there was an order which was duly promulgated but also that the accused person was aware of it. 41 C. L. J. 250; 54 C. 152; 99 I. C. 36; 28 Cr. L. J. 4; 1926 Cal. 28.

—in order to affect a person with the knowledge of an order under s. 144 Cr. P. C. and to render him liable to conviction under s. 188 I. P. C. it is not sufficient to show that the order had been duly promulgated. It is necessary to prove by positive evidence that he had the knowledge of the order. 31 C. W. N. 340; 100 I. C. 830; 28 Cr. L. J. 350; 45 C. L. J. 202; 1927 Cal. 306.

(9) Appeal and revision.

—when the Police Report is vague ... V. N. 198.

—even after the expiration of two years ... W. N. 145; 28 C. L. J. 483; 1 I. C. 324; 1924 Pat. 703; 24 C. L. J. 272; 11 C. W. N. 79, 13 C. W. N. 195, 1930 Cal. 131; 1930 Cr. C. 131, 1928 Cal. 446, 30 M. L. T. 148; 67 I. C. 500, *contra*, 16 Cr. L. J. 272; 28 Ind. C. 160, 82 I. C. 472; 47 M. L. J. 439, 38 M. 489, 3 Pat. L. R. 70; 88 I. C.

S. 144. (9) Appeal and revision—*contd.*

845 1925 Pat 514 : 26 Cr. L. J. 1229, 1923 Pat. 480 : 29 Cr. L. J.
465 109 I. C. 113

—an application for revision of an order under s. 144 was rejected by the H. C. as the period of the order had elapsed, but the legality of the order could be questioned in proceedings under s. 188 I. P. C. 34 C. L. J. 578

—when an order is duly passed the H. C. cannot interfere. 3 M. 354, 5 M. L. T. 217, 8 C. W. N. 373, 4 L. B. R. 75, 2 C. 293 F. B., 8 C. 580, 18 W. R. C. 22, 4 Bom. L. R. 582, 19 C. 137, 24 C. 527, 5 M. L. T. 217, but when the order is without jurisdiction the H. C. may set it aside. 1 C. 7 F. B., 16 C. 80, 19 C. 107, 35 C. 852 : 2 C. W. N. 593, 2 C. W. N. 572, 3 C. W. N. 49 : 26 C. 189, 7 C. W. N. 142, 25 A. 537, 28 A. 485, 19 M. 41, 34 Punj. Rec. 5, 1 Pat. L. R. 223, 24 Cr. L. J. 947 75 I. C. 531

—an order under this sec. cannot be revised under s. 435 Cr. P. C. 1929 M. W. N. 694 : 116 I. C. 137 : 30 Cr. L. J. 629 *contra*. The H. C. has power to interfere in revision with orders under s. 144, the effect of the omission in the present Code of cl. (3) to s. 435 being to remove ban under the old Code. 58 M. L. J. 148.

—the H. C. will prevent the evasion of law by a M. passing successive prohibitory orders under this sec. 25 M. L. J. 370 : 14 Cr. L. J. 589

—whether the order made was or was not the best that could be made is not a question which the H. C. is to consider. 5 M. L. T. 217.

—an order passed under s. 144, by Joint Magistrate while acting as a D. Magistrate, can be cancelled or altered after his reversion, by the then D. Magistrate himself and the latter cannot transfer an application for rescission or alteration to the former. 16 Cr. L. J. 74, 26 Ind. C. 666.

L. J. 27.

—there is neither revisional nor appellate jurisdiction in the M. under this sec. but there is still a special jurisdiction vested in him by the statute to rescind or alter any order made by himself or by his subordinates or by his predecessor in office. 1 Pat. L. R. 53 Cr. : 72 I. C. 171 : 24 Cr. L. J. 331 : 1 Pat. L. R. Cr. 2 : 2 Pat. 94, 3 Pat. L. T. 573, F. B.

—the H. C. can interfere with an order under s. 144, where the M. has used the section as a means of granting a perpetual injunction 30 M. L. T. 148 : 67 I. C. 500.

—a M. passing an order under s. 144 is not acting as a public servant. Where the M. sanctions prosecution

S. 144. (9) Appeal and revision—*contd.*

under s. 188 I. P. C. for disobedience of the order the S. J. cannot revoke it. 47 M. 56, (6 M. 203 F. B., 14 W. R. 46), *fol.* 35 M. L. J. 454 *Diss.*

—when an order under s. 144 (1) is wholly without jurisdiction the H. C. will interfere under s. 107 of the Govt. of India Act and set it aside. The party affected need not approach the Dt. M. 1 Pat. L. R. 223 : 24 Cr. L. J. 947 : 75 I. C. 531.

—on appeal under s. 144 (4) a Dt. M. cannot pass an order against the opposite party in whose favour an order had been made by the S. D. O. 30 M. L. T. 148 ; 42 M. L. J. 352 : 67 I. C. 500.

S. 145. Procedure where dispute concerning land & c., is likely to cause breach of the peace.

In order to meet the difficulties which had arisen in connection with the words "receive the evidence produced by them" in cl. 4, the expression "all such evidence as may be produced" was substituted by the amendment.

SUB-HEADINGS OF NOTES,

- (1) Scope of the section.
- (2) Applicability of the section.
- (3) Jurisdiction.
- (4) Procedure.
- (5) Parties in s. 145 proceedings
- (6) Nature and Evidence of possession
- (7) Effect of order under this section on subsequent civil suit and criminal case.
- (8) Illegal orders
- (9) Ss. 107, 144, 145 and 147, which will apply
- (10) Transfer, Revision and Reference.
- (1) Scope of the section.

—the sole object of the sec. 145 is to prevent an imminent breach of peace and the decision must be made at once 81 Ind. C. 933 : 25 Cr. L. J. 1109.

—proceedings under s. 145 Cr. P. C. should be finished quickly and before the disposal of other cases relating to the same subject-matter, 1929 Rang. 314 : 114 I. C. 677 : 30 Cr. L. J. 314, 1923 Rang. 211 *Ref.*

—the object of this sec. is to pass a temporary order to have the actual possession of the parties determined by any

as to the possession of a profits arising from a definite

—s. 145 relates only to dispute about immovable property. Standing crops are immovable property within clause (2) but crops that have been severed from the land are not immovable property and a dispute concerning such crops cannot be the subject of dispute under this section. 6 Cr. R. 527 : 7 L. R. 193 (Cr.)

S. 145 (1) Scope of the section—contd

—the purpose of the section is to preserve the public peace and prevent the breach of the peace 30 C. 112; 6 C. W. N. 417, 30 A. 41, 28 C. 446; 5 C. W. N. 428, 6 C. W. N. 101, 24 C. 55, 4 B. R. 1892-1896 vol 123

—proceedings will be initiated under this sec. only to avert a breach of the peace which would otherwise take place due to the existence of a dispute between the parties. When the Police report disclosed only that there was a likelihood at some future date of a breach of the peace, it was not sufficient to initiate proceedings under s. 145 33 C. W. N. 509, 49 C. L. J. 394; 30 Cr. L. J. 977, 1929 Cal. 341, 118 I. C. 892

—the intention of the Legislature in enacting this sec. is that the order made by the M. should have reference rather to the subject matter of the dispute than to the person who are engaged therein 1929 Cr. C. 265, 1929 Pat. 505; 30 Cr. L. J. 840; 117 I. C. 643

—a M. in deciding the question of possession under this section is concluded by a previous order of the Criminal Court unless he finds that there has been a change of possession since the previous order 95 I. C. 475, 27 Cr. L. J. 815; 1926 Lah. 479 (33 C. 33, 1923 C. 361) *Dist*

—ordinarily a dispute as to land should be inquired into in a proceeding under s. 145; but where a Civil Court has put one of the parties in possession, there is no land dispute, 3 Pat. L. T. 826; 1922 Pat. 13

—where the M. finds that there is a *bona fide* dispute between the parties he ought to initiate proceedings under s. 145. Where the presumption of the Record of Rights and of the partition papers were in favour of one party and the police report was in favour of the opposite party there was clearly a case in which there was a *bona fide* dispute as regards possession, 3 P. L. R. Cr. 70; 88 I. C. 845, 1925 Pat. 514; 1928 Pat. 574; 29 Cr. L. J. 613; 109 I. C. 805.

—the provisions of sec. 10 of the Bengal Alluvial Lands Act are wide enough to apply to all proceedings including an attachment under s. 145 Cr. P. C., 33 C. W. N. 1115; 1929 Cal. 646; 1929 Cr. C. 326.

(2) Applicability of the section.

—to apply this section (i) there should be dispute likely to cause a breach of the peace, and (ii) this dispute should concern land or water. 30 C. 155; 6 C. W. N. 737, 89 I. C. 156; 26 Cr. L. J. 1292 F. B., 2 Weir 117.

—two essential conditions are necessary to confer jurisdiction on a M. to proceed under s. 145, *i.e.* (1) there should be a dispute over land or water (2) and also it must be likely to cause a breach of the peace. 89 I. C. 156; 26 Cr. L. J. 1292

... if there be a breach of the peace the
W. N. 590, 26 A. 190, 7
13 C. L. R. 410, 5 A. 63
s. 79, 23 C. 557 *contra*.

S. 145. (2) Applicability of the section—contd.

S. L. R. 50 Cr : 8 Cr. L. J. 170, 33 C. 33, 352, 6 C. 835, 20 C. 513, 520, 26 C. 625, 89 I. C. 309 : 26 Cr. L. J. 1333.

—mining rights fall within the definition of the term 'land', 20 Cr. L. J. 199 : 4 Pat. L. J. 151, 1922 Pat. 122.

—the definition of land is wide enough to cover mining rights and even prospecting or boring licenses 35 C. L. J. 456.

—the term 'land' has a very wide signification. 2 Weir 108.

—the right to worship in a temple comes under this sec. 24 B. 537, 11 M. 323.

—a dispute regarding the possession of a temple comes within this sec. 2 Weir 99, 110.

—movable property cannot be the subject of this section. 11 C. W. N. 262 (note)

—standing crops are immovable property within the meaning of s. 145 (2) but crops severed from the land are not immovable property. 1927 All. 99 : 6 Cr. R. 527 : 7 L. R. 193 (Cr.), 28 A. 266 *Relied on*.

—the word "crops" in s. 145 (2) means not only standing crops but it includes crops cut and stored 1923 Sind. 68 : 105 I. C. 813 : 28 Cr. L. J. 989 : 22 S. L. R. 151, *contra*. 111 I. C. 411 : 29 Cr. L. J. 857 : 22 S. L. R. 386.

—offerings in a temple are movable property and are not profits arising out of the building and this sec. does not apply. 38 C. 387 : 16 C. W. N. 524 : 13 C. L. J. 445, 37 C. 578, *followed* in 1927 Nag. 333 : 103 I. C. 415 : 23 Nag. L. R. 81 : 28 Cr. L. J. 687.

—"parties concerned" means persons interested in the dispute. 30 C. 155 : 6 C. W. N. 737 F. B., 20 C. W. N. 978, 24 A. 443.

—the possession contemplated by the sec. is actual possession. 9 C. W. N. 887, 1 C. L. J. 331, 27 M. L. T. 169, 84 I. C. 942, 95 I. C. 320 : 27 Cr. L. J. 784

—a M. cannot take into consideration the effect of an alleged dispossession more than two months back. 1930 Cr. C. 68 : 30 Cr. L. J. 1124 : 120 I. C. 90, 15 B. 152 *fol.* 4 C. 417 *Doubted*.

—when both parties are included in the term 'public', it becomes a question of joint possession and it is in the nature of an easement and proper proceeding should be to take cognizance under s. 144 and not 145. 17 C. W. N. 205 : 17 C. L. J. 397.

—the magistrate is to decide the fact of possession and not the right to possess. 25 B. 179, 30 C. 155 : 6 C. W. N. 737 F. B., 6 C. L. J. 128, 7 C. L. J. 369, 36 C. 795, 20 C. W. N. 978, 24 A. 443, 29 C. 187, 6 C. W. N. 386 : 29 I. A. 24 P. C., 95 I. C. 320 : 27 Cr. L. J. 784.

—where the M. finds that there is a *bona-fide* dispute between the parties he should initiate proceedings under this sec. Where the Record of Rights and the partition papers are in favour of one party and the police report is in favour of another, there is a clear case of *bona-fide* dispute between the parties as regards possession. 88 I. C. 845 : 26 Cr. L. J. 1229 : 1925 Pat. 514 : 6 Pat. L. T. 746.

S. 145. (2) Applicability of the section—contd.

—the only question for the Magistrate is whether either party has actual possession and if he finds that one party has actual possession of a defined area and the other party has not, he can make an order under this sec. irrespective of the fact that the parties may have joint title of the land. 40 C. 982.

—“actual possession” is sub-sec (1) of s. 145 means actual physical possession even of the trespasser “Dispute” means actual disagreement existing between the parties at the time of the proceedings even if it has already been decided by a Civil Court. 32 C. W. N. 1173 1924 Cal 610 48 C. L. J. 193 ; 56 C. 290 ; 113 I. C. 181 ; 30 Cr. L. J. 69 F. B

—the sec. applies to disputes about actual physical possession and not to disputes about joint possession. 1928 Lah. 818 ; 29 Cr. L. J. 773, 110 I. C. 807

—the court is concerned with the actual *de facto* possession of the disputed land Where the first party claimed possession through tenants and it appeared that the tenants had attorned to the second party, the first party were entitled to retain possession through the tenants. 33 C. W. N. 574 . 1929 Cal 632 : 119 I. C. 31 ; 30 Cr. L. J. 982 : 1929 Cr. C. 344

—there should not be an abuse of the sec. 81 Ind. C. 985, 2 Bur. L. J. 295.

—a criminal court cannot take action under s. 145 Cr. P. C. on the application of a party who has been wrongfully dispossessed unless the dispossession is forcible as well. 84 Ind. C. 332 : 1925 Pat. 33

—a party to a proceeding under this sec is not in the position of a plaintiff in a civil suit who has set the court in motion and has a right to require a decision upon the questions raised by him. 30 C. 112, 30 A. 41.

—the magistrate should not deal with the proceedings under this sec as if it is a civil suit. 35 C. 795.

—the tribunal is not under the necessity of coming to a conclusion at all 14 C 361, 5 C. W. N. 900.

—the dispute between the parties was with regard to the right to go upon the temple to perform the puja and take a portion of the offerings to the idol. There was no dispute regarding the temple or any land belonging to the idol, held that such a right

land as provided in s. 145
be considered to be one
37 ; 52 Cal. 959, 92 I. C.

but if there is a dispute between the parties leading to a breach of the peace, proceedings may be drawn up under s. 107 Cr. P. C., 42 C. L. J. 127 ; 52 C. 959 ; 92 I. C. 233 ; 1926 Cal. 437 ; 27 Cr. L. J. 239.

—s. 145 does not apply to a case where the claim possession of a market at all only one day a week respondents are alleged to be in possession throughout 49 C. 871.

S. 145. (2) Applicability of the section—contd.

—s. 145 applies to disputes with regard to subsoil rights and a dispute as regards possession of minerals underneath falls under this sec. 35 C. L. J. 456: 1922 Cal. 83, 32 C. L. J. 54 Dist

—this section does not apply where there is a civil court decree 24 W. R. Cr. 17, 16 W. R. Cr. 24, 6 C. 835, 6 C. W. N. 841, 24 B. 527.

—a judgment-debtor should not be allowed in a proceeding under s. 145 to retain possession against his decree-holder-auction purchaser who has taken possession, 20 C. W. N. 796: 23 C. L. J. 555.

—civil court decree passed *ex parte* against a person not a party to the proceeding and the delivery of symbolical possession thereunder may be ignored. 25 Cr. L. J. 1104, 81 I. C. 928.

—the decision of the civil court on the question of possession is not conclusive in proceedings under this section. 15 Cr. L. J. 663: 25 I. C. 991.

—order under this sec. does not affect the power of the civil court. 22 A. 214: A. W. N. (1900) 22.

—where there is a civil court decree a Magistrate cannot compel the successful party to go back to the civil court and get something else; he must give effect to the civil court decree. 91 I. C. 75: 27 Cr. L. J. 43.

—but the Magistrate may judge as to the *bona-fide* nature of civil suit. 23 C. W. N. 982.

—this section may protect the manager of a joint Hindu family. 31 M. 318.

—the legislature could hardly have contemplated an elaborate and protracted investigation the result of which might, in many instances, be to defeat the very object in view, viz., an effective prevention of the breach of the peace. The whole object might obviously be defeated, if the court could be compelled to summon and re-summon witnesses at the choice of the parties. 32 C. 1093: 2 C. L. J. 280.

—the provisions of sec. 145 are not impliedly repealed by the provisions of the Bengal Alluvial Lands Act, so far as recently-formed alluvial lands are concerned. 28 C. W. N. 783: 81 Ind. C. 931: 25 Cr. L. J. 1107: 1924 Cal. 980.

—right to open a temple and to perform *Puja* and to take a portion of the offerings made to an idol is not a "right of user" of any land within sec. 145. 42 C. L. J. 127: 52 C. 959.

(3) Jurisdiction.

—before instituting proceedings under this sec. the magistrate must determine that a dispute exists, who are parties concerned and the identity of the disputed land. 24 C. 55: 1 C. W. N. 3 F. B., 30 C. 155: 6 C. W. N. 737, 3 C. 443: 7 C. W. N. 174, 6 C. W. N. 101, 7 C. W. N. 558, 11 A. L. J. 696: 36 A. 19, 17 C. W. N. 793, 5 C. W. N. 563.

S. 145. (3) Jurisdiction—contd.

—the magistrate is not bound to act on all that is stated in the police report, 27 C. 892, 33 C. 33; 10 C. W. N. 257, 22 W. R. Cr 79 *diss*, he must form his own judgment and not proceed automatically upon a mere opinion of the police or the direction of some other officer, 105 I. C. 449 28 Cr. L. J. 929; 1928 Nag. 81.

—although the general law is that it is the imminence of a breach of the peace as disclosed in the Police report that creates jurisdiction to initiate proceedings under s 145 yet the Magistrate need not confine himself to the Police report, 33 C. W. N. 858; 49 C. L. J. 428; 1929 Cal. 463; 30 Cr. L. J. 1017; 1929 Cr. C. 95; 119 I. C. 372.

—a M. is not bound to accept the version given by the Police beyond what he requires for the support of his order under s 145, 33 C. W. N. 858 49 C. L. J. 428 1929 Cal. 463; 1929 Cr. C. 95; 119 I. C. 372.

—the Police report can be relied on for taking action under this section, but the Magistrate should carefully scrutinise evidence in such cases 91 I. C. 244; 1926 Nag. 371; 27 Cr. L. J. 68.

—the Police report and the sketch of the disputed land on which the proceedings started cannot be the basis of a finding as to possession and objection to their admissibility can for the first time be taken in revision before the High Court 31 C. W. N. 310; 100 I. C. 713; 1927 Cal. 327; 28 Cr. L. J. 329.

—if it does not appear from the police report that there is likelihood of a breach of peace no proceedings can be instituted, 20 C. 513, 11 C. W. N. 198, 835, 10 C. 781, 7 C. 385, 20 C. 250, 23 C. 537.

—where there is no police report, the statement of the interested parties as regards the existence of a breach of the peace must be received with great caution and if the M. believes such statement the proceeding is not without jurisdiction, 72 I. C. 32; 24 Cr. L. J. 304 (C).

—imminent breach of the peace alone gives the M. jurisdiction, 24 C. W. N. 56 (note).

—the mere opinion of the police officers without sufficient materials should not be acted upon, 11 C. W. N. 198, 835.

—the evidence recorded by the Magistrate during inquiry cannot give him a jurisdiction which he does not otherwise possess, 23 C. 557, 20 C. 250.

—a police report in itself is not evidence of the existence of the likelihood of the breach of the peace, 7 B. L. R. 329.

—the Magistrate cannot act upon the petition of the employee of an interested party without recording further evidence, 29 M. 561.

—where two persons took joint lease of certain lands and subsequently disputes having arisen between the lessees claiming unequal shares the M. drew up proceedings under a. 145 regard the disputed share only, held that the M. had jurisdiction.

S. 145. (2) Applicability of the section—contd.

—s. 145 applies to disputes with regard to subsoil rights and a dispute as regards possession of minerals underneath falls under this sec. 35 C. L. J. 456: 1922 Cal. 83, 32 C. L. J. 54 Dist

—this section does not apply where there is a civil court decree 24 W. R. Cr. 17, 16 W. R. Cr. 24, 6 C. 835, 6 C. W. N. 841, 24 B. 527.

—a judgment-debtor should not be allowed in a proceeding under s. 145 to retain possession against his decree-holder-auction purchaser who has taken possession 20 C. W. N. 796: 23 C. L. J. 555.

—civil court decree passed *ex parte* against a person not a party to the proceeding and the delivery of symbolical possession thereunder may be ignored. 25 Cr. L. J. 1104 81 I. C. 928.

—the decision of the civil court on the question of possession is not conclusive in proceedings under this section. 15 Cr. L. J. 663 25 I. C. 991.

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—but the Magistrate may judge as to the *bona-fide* nature of civil suit. 23 C. W. N. 982.

—this section may protect the manager of a joint Hindu family. 31 M. 318.

—the legislature could hardly have contemplated an elaborate and protracted investigation the result of which might, in many instances, be to defeat the very object in view, *viz.*, an effective prevention of the breach of the peace. The whole object might obviously be defeated, if the court could be compelled to summon and re-summon witnesses at the choice of the parties. 32 C. 1093: 2 C. L. J. 280.

are not impliedly repealed by the Lands Act, so far as recently ed. 28 C. W. N. 783: 81 Ind. C. 980.

—right to open a temple and to perform *Puja* and to take a portion of the offerings made to an idol is not a "right of user" of any land within sec. 145. 42 C. L. J. 127: 52 C. 959.

(3) Jurisdiction.

—before instituting proceedings under this sec. the magistrate must determine that a dispute exists, who are parties concerned and the identity of the disputed land. 24 C. 55: 1 C. W. N. 3 F. B., 30 C. 155: 6 C. W. N. 737, 3 C. 443: 7 C. W. N. 174, 6 C. W. N. 101, 7 C. W. N. 538, 11 A. L. J. 696: 36 A. 19, 17 C. W. N. 793, 5 C. W. N. 363.

S. 145. (3) Jurisdiction—*contd.*

—the magistrate is not bound to act on all that is stated in the police report, 27 C. 892, 33 C. 33; 10 C. W. N. 257, 22 W. R. Cr. 79 diss., he must form his own judgment and not proceed automatically upon the mere opinion of the police or the direction of some other officer. 105 I. C. 449; 28 C. L. J. 929; 1928 Nag. 81.

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report. 33 C. W. N. 858; 49
J. 1027; 1929 Cr. C. 95; 119

I. C. 372.

—a M. is not bound to accept the version given by the Police beyond what he requires for the support of his order under s. 145. 33 C. W. N. 858; 49 C. L. J. 428; 1929 Cal. 468; 1929 Cr. C. 95; 119 I. C. 372.

—the Police report can be relied on for taking action under this section, but the Magistrate should carefully scrutinise evidence in such cases. 91 I. C. 244; 1926 Nag. 371; 27 Cr. L. J. 68.

—the Police report and the sketch of the disputed land on which the accused has started cannot be the basis of a finding as to for the first time
C. W. N. 310; 100

—if it does not appear from the police report that there is likelihood of a breach of peace no proceedings can be instituted. 20 C. 513, 11 C. W. N. 198, 835, 10 C. 781, 7 C. 335, 20 C. 250, 23 C. 537.

—where there is no police report, the statement of the interested parties as regards the existence of a breach of the peace must be received with great caution and if the M. believes such statement the proceeding is not without jurisdiction. 72 I. C. 32; 24 Cr. L. J. 304 (C).

—imminent breach of the peace alone gives the M. jurisdiction. 24 C. W. N. 56 (note).

—the mere opinion of the police officers without sufficient materials should not be acted upon. 11 C. W. N. 198, 835.

—the evidence recorded by the Magistrate during inquiry cannot give him a jurisdiction which he does not otherwise possess. 23 C. 557, 20 C. 250.

—a police report in itself is not evidence of the existence of the likelihood of the breach of the peace. 7 B. L. R. 329.

—the Magistrate cannot act upon the petition of the employee of an interested party without recording further evidence. 29 M. 561.

—where two persons took joint lesse of certain lands and subsequently disputes having arisen between the lessees claiming unequal shares the M. drew up proceedings under s. 145 regarding the disputed share only. held that the M. had jurisdiction, the

S. 145. (3) Jurisdiction—*contd.*

—no order can be made in respect of persons disclaiming all interest in the property 6 C. W. N. 104.

—no order can be made in respect of plots not covered by the proceeding, 11 C. W. N. 43 (note), nor the Magistrate has jurisdiction to pass order in respect of a larger area of land than was included in the proceedings. 28 Cr. L. J. 929; 105 I. C. 449; 1928 Nag. 81, 9 Cr. R. 374.

—s. 145 is applicable to a dispute which relates to the exclusive possession of land and not to joint possession 6 C. W. N. 883, 75 I. C. 69; 24 Cr. L. J. 869; 1923 P. 546, 67 I. C. 203, 23 Cr. L. J. 379, 1922 P. 423.

—when there is dispute as to the share of the property and the Magistrate has to decide questions of fact and Mahamedan Law, this section does not apply. 27 C. 918.

—the Magistrate cannot decide the method by which possession is to be exercised by the parties or determine the agency by which the party in possession is to collect the profits of the land 36 C. 986, 10 C. W. N. 1088 *fol.*, 27 C. 259 *Dist.*, 4 C. W. N. 426 *Ref.*

—dispute between co-partners claiming exclusive control over partnership business does not come under s. 145 8 C. W. N. 485, 32 C. 249, 4 C. W. N. 402; 27 C. 259, 23 C. 80

—where both parties are entitled to the land the M. cannot give exclusive possession of the property to one or the other. 11 A. L. J. 696; 36 A. 19.

—s. 145 applies when one of the joint owners is in exclusive possession. 1 C. L. J. 632, 2 C. L. J. 690, 30 C. 593, 11 C. W. N. 512, 17 C. W. N. 944, 19 C. W. N. 127 (note), 2 Lsh. 372; 23 Cr. L. J. 225.

—when two sets of landlords claim through two sets of tenants the dispute is not between co-sharers and comes under this sec. 15 C. L. J. 184, 19 C. W. N. 959

—when a M. makes a local inspection and without recording the result of his observations uses them to supplement the evidence the proceedings are vitiated. 81 Ind. C. 33; 1922 Pst. 294; 25 Cr. L. J. 545

—the object of a. 145 is to finally terminate the disputes between the parties so far as the criminal court is concerned. 86 I. C. 806; 26 Cr. L. J. 870; 6 Pat. L. T. 710; 1925 Pst. 593.

.....

..... under s. 145 to attach
..... not to appoint a
..... Punj L. R. 23; 1929
..... W. N. 821; 3 Pat.
L. J. 147 *fol.*, 91 P. R. 1912 *not fol.*

—when the M. is subsequently satisfied that there is no likelihood of the breach of the peace he can drop the proceeding and is

S. 145. (3) Jurisdiction—*contd*

not bound to record evidence offered by a party. 47 M. 713; 25 Cr. L. J. 978. 81 I. C. 626, 30 C. 112, 33 C. W. N. 399; 1929 Cal. 328, *Fol.* see also. 49 M. 232; 91 I. C. 399. 1925 Mad. 122; 27 Cr. L. J. 95.

—a M. can drop a proceeding when he finds it unnecessary and make an order that the sale-proceeds of the crops will remain in deposit until the decision of the civil court. 47 M. 713; 34 M. L. T. 248; 25 Cr. L. J. 978; 81 I. C. 626.

—a M. can grant a right of way over the land in dispute to one of the parties to the proceeding. 26 Bom. L. R. 436. 48 B. 512, 17 C. W. N. 793 *not fol.*

—a M. cannot make an order under s. 145 without any evidence being adduced before him. 73 I. C. 814. 24 Cr. L. J. 702.

—it is not proper for a M. to initiate fresh proceeding under s. 145 for keeping the peace. Lands being submerged does not affect the force of the order under the sec. 27 C. W. N. 171; 37 C. L. J. 39.

—but a proceeding may be revived. 69 I. C. 452; 23 Cr. L. J. 724.

—when a M. is transferred and hands over the charge he cannot thereafter deliver the final order, being *functus officio* at that time. 38 C. L. J. 201

—the M. cannot start a fresh proceeding at the instance of the transferee of an unsuccessful party in a proceeding under s. 145, 27 C. W. N. 171; 37 C. L. J. 39; 24 Cr. L. J. 97.

—when a M. attaches the lands he cannot declare one of the parties to be in possession merely because the other party did not choose to adduce evidence. A M. cannot re-open a proceeding. 1923 Cal. 314

—no order can be passed under s. 145 till there is actual partition. 8 C. W. N. 485, 4 C. W. N. 426, 7 C. W. N. 462, 11 C. W. N. 512, 13 C. W. N. 107 (note).

—in a proceeding under s. 145 a Magistrate cannot ignore the civil court decree though the court passing the decree had no jurisdiction over the land; when the decree is *inter parties* it is immaterial that the delivery of possession is symbolical. 27 C. W. N. 267.

—the criminal court assumes jurisdiction to interfere with the lawful exercise of a persons' right to ownership when such exercise, in its ulterior consequences and being directed primarily against the lawful exercise of another person's right of ownership, is likely to cause a breach of the peace. 26 C. W. N. 663.

—when certain powers are conferred on Magistrate by the legislature, it is no business of the court to lay down limitation which are unwarranted by the language of the Code. 1920 M. W. N. 231.

—s. 145 does not apply to movable property *e.g.*, crops already cut. 30 C. 100; 6 C. W. N. 881. 9 C. W. N. 245. (note), 11 C. W. N. 262 (note), 28 A. 266.

—an inquiry without the order under sub-sec. (1) is without jurisdiction. 6 C. W. N. 737; 30 C. 155, 27 C. 281, 30 C. 443; 7 C. W.

S. 145. (3) Jurisdiction--contd.

N. 174, 23 A. 537, 33 C 352 F. B., 30 C. 593, 10 C. W. N. 53, and all the formalities mentioned therein must be complied with. 27 C. 981, 6 C. W. N. 923, 7 C. W. N. 559, 9 C. W. N. 621, 33 C. 68.

—where the circumstances require, the Magistrate may take proceedings under s. 145 after an order under s. 107. 39 C. 569; 16 C. W. N. 384.

—a Magistrate cannot dispose of a case solely on the report of a Magistrate making an enquiry under s. 148, 30 M. 82, 17 C. W. N. 131 (note)

—a Magistrate cannot execute his final order, 14 C. W. N. 78, 179, nor can give possession 37 A. 654, 72 I. C. 621. 24 Cr. L. J. 461.

—when disputed land is situated partly within one district and partly in another the Magistrate of either district may initiate proceedings 329, 29 C 835

has no power to alter the District permanently, temporarily or for the purpose of any particular case. So where the District Magistrate transferred the petition to a Subdivisional Magistrate and the land concerned was not within the District by him under s. 145 (1) was 4 I. C 625; 1928 Mad 1230. 1, 22 C. 898 Dist. 41 M 246

Approved

—a District M. has no authority to direct a Subordinate Magistrate to initiate proceedings under s. 145 Cr. P. C. which is a matter entirely within the discretion of the latter. 34 C. W. N. 82; 1929 Cal 805. 50 C L. J. 287. 1929 Cr. C 574

—an order under s. 522 Cr. P. C. which has never been acted upon is no bar to a Magistrate to take proceedings under s. 145. 18 C. W. N. 1088

—a M. can transfer a case to another M. 4 Pat. L. T 308; 73 I. C 173.

—the fact that there was a proceeding under s. 145 Cr. P. C. that there was an enquiry into the matter and that there was decision adverse to one of the parties, is a relevant fact in a suit for possession of the disputed land in a civil court. 40 C. L. J. 30.

(4) Procedure

—no complaint is necessary, nor is the M. confined to evidence recorded on oath. 19 W. R. Cr. 10.

—the information on which the Magistrate takes action must contain reference to a breach of the peace. 6 C. W. N. 340, 23 C. 557, 4 C. W. N. 57.

—the provisions of the sec. must be complied with. 25 A. 537; A. W. N. (1903) 102, 26 C. 183, 24 B. 527, 18 M. 41, 27 C. 981, 7 C. W. N. 174, 26 A. 144.

—a telegram is not an information. 22 B. 956.

—the Magistrate must specify the nature of information received by him and state the principal facts which is his judgment.

S. 145. (4) Procedure—*contd.*

constitute grounds for believing that a dispute concerning a certain land exists. 19 W. R. Cr. 10, 4 C. W. N. 799, 10 C. 78, 6 P. R. 1885, 20 C. 520.

—the use of printed forms by the Magistrate was condemned as it is likely to prevent the magistrate from applying his mind to a consideration of the case. 9 C. W. N. 51 (note), 45 M. L. J. 56 : 1923 M. 142.

—the magistrate must examine the witnesses tendered by the parties and come to a judicial conclusion. 4 O. W. N. 779, 9 W. R. Cr. 64, 15 C. W. N. 114 (note)

—it is not obligatory on a M. to assist the parties to produce their witnesses and they cannot claim as a matter of right that process should be issued. The refusal to issue such summons does not mean a denial of fair trial. 3 Pat. L. T. 433 : 66 I. C. 419 : 23 Cr. L. J. 275, 32 C. 1096, 38 C. 24 *fol.*

—a magistrate has no jurisdiction to pass order under this sec. without giving notice to the parties, without calling for written statements from them and without giving an opportunity to cite witnesses or to put in documentary evidence. 8 C. L. J. 71.

—where no notice was served on a party to the proceedings under s. 145 he is entitled to have the proceedings set aside. 101 I. C. 450 : 1927 Nag. 234 : 28 Cr. L. J. 418.

—but where on revision from an order under s. 144 Cr. P. C. by a Subordinate M. the District M. remanded the case directing the former to initiate proceeding under s. 145 and the subordinate M. initiates proceeding under s. 145 without giving notice to the opposite party it was held that it was merely an irregularity, 33 C. W. N. 723 : 1929 Cal. 751 : 1929 Cr. O. 335, in the same case it was also held that although the order of remand by the Dt. M. was ultimately set aside the order of the Subordinate M. upon the original Police report was not illegal.

—proper opportunity should be given to the parties to produce their evidence. 6 Pat. L. T. 215 : 26 Cr. L. J. 965 : 1925 Pat. 553.

—magistrate can postpone proceedings *sine die* and such postponement does not operate as an withdrawal of the proceedings. 13 C. W. N. 601.

—the Magistrate cannot adjourn proceedings under this sec. *sine die* pending settlement of the tract under regulation VII of 1882, 8 C. L. J. 564 : 13 C. W. N. 104

—an order purporting to be under Ch. XII should specify the section under which it is passed and it should not be left for speculation to the court of Appeal or Revision to determine the sec. 18 Cr. L. J. 295.

—publication near the place is general notice and it is not necessary to give notice to all persons interested. 30 C. 155 : 6 O. W. N. 737.

—cl. (3) requires that a copy of the proceedings under s. 145 shall be published by affixing it to some conspicuous place at or near the subject-matter of dispute ; this provision is intended to give

S. 145. (4) Procedure—contd.

notice to the persons interested to come forward and he made parties. So the M. must maintain the order relating to possessions by taking action under ss. 107 and 144 Cr. P. C. against all including persons who were not parties in the prior proceedings. 10 Pat. L. T. 685.

—a notice which does not state the ground of satisfaction of the M. or specify the plot in regard to which the dispute exists, though irregular, does not vitiate the proceeding. 81 Ind. C. 963; 25 Cr. L. J. 1139.

—the Magistrate in his final order under s. 145 must set out the reasons for his decision. 34 O. L. J. 125, 28 Cr. L. J. 623; 1927 Nag. 177; 102 I. C. 911; 5 Rang. 129, and it must be based on evidence. 34 C. L. J. 127, 71 I. C. 518. 1923 M. 24.

—when there has been previous proceeding under s. 145 Cr. P. C. a fresh proceeding in respect of the same land and parties is not legal, the previous order must be maintained. 27 C. W. N. 20 (Note).

—when proceedings have been struck off and fresh proceedings instituted on new materials they must be recorded. 6 C. W. N. 923, 23 C. 867, 15 C. W. N. 271, 563.

—the requirements of s. 145 must be strictly followed. The omission to record the preliminary order under cl. (1) amounts to an illegality. 26 P. L. R. 712, 99 I. C. 1031; 49 A. 325; 1927 All. 288; 25 A. L. J. 246.

—where an order under section 145 is based on evidence recorded at a time when one of the parties was not on the record at all, it is wholly illegal. 89 I. C. 153. 26 Cr. L. J. 1289; 1925 Nag. 457.

—the Magistrate cannot refuse summons to witnesses or to hear arguments. 11 C. 762, 21 C. 29, 30 C. 508; 7 C. W. N. 404 (414), 32 C. 1093, C. W. N. 1917 Pat. p. 118; 18 Cr. L. J. 322.

—under this sec. the M. takes action on behalf of the Crown on a report made to him and all processes should issue at Govt. expense and the parties originally mentioned and any others that may come in later should be ranged on one side as the first party and the second party and so on. 81 Ind. C. 933 (N); 25 Cr. L. J. 1109.

—proceedings under this sec. should be summary and not elaborate. 81 Ind. C. 905; 35 Cr. L. J. 1081.

—the M. should state the grounds upon which he is satisfied that a dispute likely to cause a breach of the peace exists. If he fails to do so his subsequent proceedings would be without jurisdiction. 81 Ind. C. 985; 2 Bur. L. J. 295.

—an order under s. 145 containing a very brief statement of some of the facts of the case and which does not discuss the evidence and states no reasons as to the finding of possession is not a decision according to law. 1928 Nag. 255; 29 Cr. L. J. 312; 10 Cr. R. 2; 107 I. C. 907, 1928 Nag. 325; 111 I. C. 445; 29 Cr. L. J. 861.

—the M. must give reasons for his decision. 1928 Mad. 1230; 1928 M. W. N. 921; 55 M. L. J. 693.

S. 145. (4) Procedure—*contd.*

—an order striking off a case without making a final order as contemplated by law is illegal. 83 Ind. C. 665; 1924 Pat. 231.

—there must be some material before the M. to come to a conclusion that there is no apprehension of breach of the peace. 83 Ind. C. 665; 1924 Pat. 231, 83 Ind. C. 693; 5 P. L. T. 252

—the M. must exercise his own judgment upon materials placed before him. 83 Ind. C. 693; 5 P. L. T. 252

—but it may be refused on the ground of vexation. 24 C. 55 but see 18 C. W. N. 94 where such order was held to be bad.

—witnesses produced must be heard. 15 C. W. N. 114 (note).

—adjournment should not be granted after the date originally fixed without adequate grounds. 17 C. W. N. 144; 17 C. L. J. 610.

—s. 526 sub-sec. (8) does not apply to a proceeding under s. 145. 18 C. W. N. 393, 34 C. W. N. 59.

—where with the consent of parties, the matter is referred to arbitration and award is filed and accepted by both the parties it is not open to either of them to object to the award in revision. 3 P. L. J. 248; 19 Cr. L. J. 266, *but see below*

—proceedings under s. 145 Cr. P. C. cannot be compromised or submitted to arbitration. All that can be done is that there may be an agreement as to the mode of taking evidence either by a commissioner or by arbitrators who have no power to decide the case but can only submit a report which the M. must consider before passing order. 1929 Nag. 285, 1929 Cr. C. 459, 1924 Pat. 589, 2 Pat. L. J. 80, 32 C. 552, 15 C. W. N. 568, 1921 Cal. 637 *Ref.* 1923 All. 77, 7 C. W. N. 461 *Dist.*

—a Magistrate cannot execute his final order. 14 C. W. N. 78, 179; nor can possession be given of the property to the person in whose favour it is decided. 37 A. 654.

—order for cost should be made within a reasonable time. 29 M. 373, 22 C. 387, 23 C. 37, 10 C. W. N. 1059.

—the object of the sec. is to put an end to disputes as to possession of immovable property so as to prevent a breach of the peace. So all the parties should be allowed to put forward their respective claims. When a written statement of a party is refused he is not bound by the decision in the proceeding. 81 Ind. C. 442; 5 P. L. T. 458.

1929 Cr. C. 265; 10 Pat. L. T. 689.

—the M. may drop the proceeding at any stage being satisfied from any source that no dispute likely to cause a breach of the peace exists. When standing crops are attached and sold and the sale proceeds are in deposit, the proper order in such case would be to direct that the money be kept in deposit till one party obtains an order from the Civil Court. 81 Ind. C. 626; 46 M. L. J. 565; 47 M. 713.

S. 145. (4) *Prncadura—contd.*

—when a M. makes a local inspection and without recording the result of his observation uses them to supplement the evidence, the proceedings are vitiated. 81 I. C. 33. 1922 Pat. 294: 25 Cr. L. J. 545

(5). Parties in S. 145 proceeding.

—the object of the proceeding under s 145 is to put an end to the disputes as to possession of immovable property so as to prevent a breach of the peace. So it is necessary that all parties contending should be brought on the record and an opportunity should be given to all to put forward their respective claims. 5 Pat. L. T. 458, 81 I. C. 442

—parties do not mean servants or agents of persons really interested. 21 C. 915, 25 C. 423, 7 C. W. N. 208, 16 C. W. N. 3

—proceedings are not bad because zeminders are not made parties in a dispute between two sets of tenants. 6 C. W. N. 206.

overruled, 10 C. W. N. 1095

—proceedings under s 145 take place on behalf of the Crown on a report made to the Magistrate. The proceedings are against all other parties concerned and processes should issue at Govt. expense. The parties originally mentioned and any others who may come in later should be ranged on one side as the first party, the second party and so forth. 1925 Nag. 142.

—when a person comes to show that there is no dispute he does not become a party, 3 C. W. N. 392, 5 C. W. N. 900, 6 C. W. N. 737.

—“parties concerned” means persons interested in the dispute, 6 C. W. N. 737: 20 C. 155 F. B., 20 C. W. N. 978, 21 A. 443.

—a receiver appointed by the H. C. cannot be made a party. 30 C. 593: 7 C. W. N. 390, 30 C. 721, 1014.

—it is optional with the party to attend or not, the Magistrate is not competent to issue warrant upon a party. 5 C. W. N. 71.

—the M. should not shrink from passing an order in favour of the party who has given satisfactory evidence of his possession even if the other party has remained *exparte*. 1924 Pat. 47.

—no order can be made under this sec. in respect of person who disclaim all interest in the property. 6 C. W. N. 104.

—final orders without making a petitioner der Cl. (5
party and without hearing him, is bad in law. 14 N. 708

—where an order under s. 145 is based on a time when one of the parties was not on the record wholly illegal. An order passed by a M. dropping unnecessary cannot be reviewed by him. 89 I. 1239: 1925 Nag. 457. i ail.

S. 145. (4) Procedure—*contd.*

—under s. 145 proper opportunity should be given to the parties to produce their evidence. 6 Pat. L. T. 215.

—when the M. has before him clear and undeniable evidence that there is no more likelihood of a breach of the peace and that the parties have come to a settlement of their dispute, the M. must drop the proceedings. 3 P. 288; 1925 Pat. 589, 15 C. W. N. 563 *Ref.*

—where the proceeding is dropped with the consent of both the parties the court has no jurisdiction to enter into an investigation of the right to the sale proceeds of the crops attached during the pendency of the proceedings. 20 L. W. 924.

—the M. is to exercise his own judgment as to whether there is likelihood of the breach of the peace. 83 I. C. 693; 1914 Pat. 83; 5 Pat. L. T. 252.

—it is highly desirable that once a hearing is commenced and witnesses are examined it should go on from day to day, until all the evidence is taken and argument is heard, and the order should be passed as soon as possible. 1924 Pat. 231; 83 I. C. 665.

—once the M. has initiated a proceeding he must complete it after taking evidence offered by the parties. 71 I. C. 112; 24 Cr. L. J. 64, even if no written statement is filed. 4 Pat. L. T. 308, 73 I. C. 173, 24 Cr. L. J. 557.

—a M. can rely on evidence partly recorded by his predecessor. 5 Pat. L. T. 237. 76 I. C. 25; 25 Cr. L. J. 89.

—when the court decides to take action under this sec. all processes should be served at the expense of the Crown. 81 I. C. 933, 25 Cr. L. J. 1100.

—an *ex parte* order can be set aside on sufficient ground being shown. 76 I. C. 975. 25 Cr. L. J. 303.

—the finding of breach of peace is necessary for the purpose of the preliminary order and not for final order. 73 I. C. 519; 24 Cr. L. J. 631; 1923 Lab. 253.

—the apprehension of a breach of the peace is the first condition necessary to give jurisdiction and when it is found that there is no longer any apprehension the jurisdiction ceases and the M. is bound to cancel the initial order and to stop proceeding. 38 C. L. J. 284; 1923 C. 577.

—there is no provision for restoration of possession, it can simply be declared that certain party is entitled to possession. 72 I. C. 621; 24 Cr. L. J. 461.

—there is no legal basis for remuneration being allowed in excess of the actual income of the property. 8 N. L. J. 167.

—proceedings struck off cannot be renewed. 71 I. C. 512; 24 Cr. L. J. 160.

Local inquiry.

—the object of the local inspection is to understand and appreciate the topography of the land in dispute and to appreciate the evidence offered in court but it cannot take the place of legal evidence, much less can the result thereof be used as a basis for the decision. 77 I. C. 492; 25 Cr. L. J. 412, 1 Pat. L. T. 563.

S. 145. (4) Procedure—*contd.*

—when a M. makes a local inspection and without recording the result of his observation uses them to supplement the evidence, the proceedings are vitiated. 31 L. C. 33; 1922 Pat 191 25 Cr. L. J. 545

(5). Parties in S. 145 proceeding.

—the object of the proceeding under s 145 is to put an end to the disputes as to possession of immovable property so as to prevent a breach of the peace. So it is necessary that all parties contending should be brought on the record and an opportunity should be given to all to put forward their respective claims. 5 Pat. L. 458, 81 L. C. 442.

—parties do not mean servants or agents of persons really interested. 21 C. 915, 25 C. 423, 7 C. W. N. 208, 16 C. W. N. 3

overruled, 10 C. W. N. 133.

—proceedings under s 145 take place on behalf of the Crown on a report made to the Magis all other parties concerned and pence. The parties originally come in later should be range second party and so forth. 1925 Nag. 142.

—when a person comes to show that there is no dispute he does not become a party. 3 C. W. N. 392, 5 C. W. N. 900, 6 C. W. N. 737.

—'parties concerned' means persons interested in the dispute, 6 C. W. N. 737; 20 C. 155 F. B., 20 C. W. N. 978, 21 A. 443.

—a receiver appointed by the H. C. cannot be made a party. 30 C. 593; 7 C. W. N. 390, 30 C. 721, 1014

—it is optional with the party to attend or not, the Magistrate is not competent to issue warrant upon a party. 5 C. W. N. 71.

—the M. should not shrink from passing an order in favour of the party who has given satisfactory evidence of his possession even if the other party has remained *exparte*. 1924 Pat. 47.

—no order can be made under this sec. in respect of persons who disclaim all interest in the property. 6 C. W. N. 104.

—final orders without making a petitioner under Cl. (5) a party and without hearing him, is bad in law. 14 C. W. N. 708

—where an order under s. 145 is based on evidence recorded at a time when one of the parties was not on the record at all, it is wholly illegal. An order passed by a M. dropping certain persons as unnecessary cannot be reviewed by him. 89 L. C. 153; 26 Cr. L. J. 1239; 1925 Nag. 457.

S. 145. (5) Parties in S. 145 proceeding—*contd.*

—all persons interested should be given an opportunity to put forward their claims 81 Ind. C. 442; 5 P. L. T. 458.

—none of the parties litigating under s. 145 can be called an accused and consequently s. 342 (4) does not apply and the parties may be examined on oath 83 Ind. C. 630, 25 Cr. L. J. 70, 29 C. W. N. 475.

—proceedings under chapter XII are *quasi* civil proceedings to determine who shall be plaintiff and who defendant in the civil suit and to prevent breaches of the peace. 41 C. L. J. 479 F. B.

—where the dispute relates to various plots and between various sets of parties the proper procedure is to make each the subject-matter of a separate proceeding, but in the absence of actual prejudice to any party there is nothing to prevent the joinder of all these in one proceeding. 85 I. C. 40, 26 Cr. L. J. 424; 1923 Pat. 545.

—a co-sharer in possession not being made party in a proceeding under this sec. is not bound by the order and can resist the party declared to be in possession. 11 O. L. J. 743, 16 I. C. 898 *Ref.*

—proceedings are not without jurisdiction because some of the parties are concerned only with possession of a portion of the lands in dispute. 71 I. C. 699, 24 Cr. L. J. 235, 89 I. C. 153; 26 Cr. L. J. 1289, 1925 Nag. 457.

—the omission to implead a tenant of a portion of the land in dispute is not fatal 3 Pat. L. T. 291, 1922 P. 371; 68 I. C. 557.

—an order under s. 145 is not binding on persons who are not parties to the proceedings and such persons have no *locus standi* to apply in revision. 87 I. C. 923, 26 Cr. L. J. 1035, but the effect of the order may under certain circumstances extend to persons other than the parties themselves. 33 C. W. N. 1002.

—where the accused were not only aware of the proceedings but they were also found to have acted in collusion with the second party in order to deprive the first party of the fruits of their success, the order under sec. 145 was binding on the accused and they were liable to continue under s. 188 I. P. C. 33 C. W. N. 1002.

—where in proceedings under s. 145 one of the parties interested is a minor but he is not served with notice the proceedings, though they be valid in law as against him, are not without jurisdiction as regards the other parties. 89 I. C. 151; 26 Cr. L. J. 1287.

(6) Nature and evidence of possession.

—when evidence of possession on both sides is equally unreliable a Magistrate cannot pass order under s. 145 basing on a presumption. Such presumption may be reliable but equally balanced. 24 Cr. L. J. 141.

—in relation to possession must be interpreted in the sense of only such actual possession as the nature of the property is susceptible of. 81 Ind. C. 942.

—"actual possession" means actual physical possession even of the trespasser and "dispute" means actual disagreement existing between the parties at the time of the proceedings even if it has

S. 145. (6) Nature and evidence of possession—contd.

already been decided by a Civil Court. 32 C. W. N. 1173: 1928 Cal. 610: 48 C. L. J. 193 F. B.

—even the possession of the trespasser, if it be peaceful is to be maintained. 1928 Nag 284 29 Cr. L. J. 902: 111 I. C. 662

—symbolical possession is not actual possession 22 C. W. N. 479, 1915 M. W. N. 55, 55 C. 826 32 C. W. N. 275 1928 Cal. 344. 109 I. C. 231. 47 C. L. J. 233 29 Cr. L. J. 503.

—symbolical possession obtained in *ex parte* decree in civil court can be ignored as against stranger to a suit 1925 Cal 186

—the question of possession has to be determined with reference to a specified point of time, i. e., the date of the initial order or in the case of forcible dispossession, a date within two months next proceeding such order. 32 C. 1093, 16 Cr. L. J. 239 (Mad).

—the M. is only to decide, without reference to title, which of the parties was in possession at the date of the proceeding. He has jurisdiction to find possession but not the mode of possession or how the possession was to be exercised; so where a certain jalkar rights were in dispute and the M. passed an order to the effect that one party was in possession throughout the year while the other was entitled to possession jointly with the former for a part of the year, the order was beyond his jurisdiction. 30 C. W. N. 873: 97 I. C. 73: 1926 Cal. 1622

—the declaration must be as to who is actually in possession. 93 I. C. 320: 27 Cr. L. J. 784. 1926 P. H. O. C. 160, 91 I. C. 76: 27 Cr. L. J. 44. No question of title can be gone into. 28 Bom. L. R. 483 95 I. C. 62 27 Cr. L. J. 734: 1926 Bom. 313, 1927 All. 476: 101 I. C. 469. 28 Cr. L. J. 437, 28 Punj L. R. 107: 28 Cr. L. J. 328: 100 I. C. 712 1927 Lah. 822.

—the possession that can be pleaded in a proceeding under this section must be possession based on a claim of right to possession. The possession of an agent or servant which is permissive cannot give a party to a proceeding a *locus standi* as against his principal or master. 92 I. C. 164: 27 Cr. L. J. 212: 1926 Nag. 286.

—possession under this section must be absolute and continuous and not occasional, but possession need not be exercised continuously or every day of the year. By "continuous possession" is meant such possession which a party in possession may have occasion to exercise and has exercised and exercises whenever he likes. Continuity of possession should be understood with reference to the object over which it is exercised. Occasional possession of fallow lands not capable of yielding much profit was sufficient possession under this section and an order of attachment under s. 146 Cr. P. C. was bad. 31 C. W. N. 331: 100 I. C. 823: 1927 Cal. 313: 28 Cr. L. J. 343.

—where a site is claimed to be burial ground the M. is to see whether the right to bury was exercised on previous occasion when necessity arose. 51 M. 522: 110 I. C. 100: 1928 Mad. 598: 29 Cr. J. 644: 55 M. L. J. 40.

S. 145. (6) Nature and evidence of possession—*contd.*

—where a dismissed agent continued in possession of the principal's house his possession could not be that of an agent, consequently of a permissive character. 29 Cr. L. J. 902: 1928 Nag. 284: 111 I. C. 662: 24 N. L. R. 148.

—the period of two months under the proviso cannot be extended by the mere fact that the court took more than two months to decide whether action could be appropriately taken under s. 107 or s. 145 91 I. C. 244: 1926 Nag. 371: 27 Cr. L. J. 68

—expression of opinion of the court in a previous criminal case that one of the parties was in possession is not conclusive as to possession. 86 I. C. 806: 26 Cr. L. J. 870.

—the order under s. 145 will be binding on the whole world taking actions interfering with possession
L. J. 39

—the date of the preliminary order is the critical date for determining the actual possession. 105 I. C. 449: 28 Cr. L. J. 929.

—where possession on date of preliminary order is not found, but possession is found on a date prior thereto there will be a presumption of continuance of possession. 42 M. L. J. 147: 1920 Mad. 356: 65 I. C. 444: 22 Cr. L. J. 92.

—but where the M. declared possession in favour of a party relying on some documents of title relating to a period as old as 10 years prior to the proceeding without taking further evidence as to the continuance of possession the order was bad in law. 18 C. W. N. 700

—refusal of Magistrate to examine witness tantamounts to refusal to exercise jurisdiction. 1920 M. W. N. 133.

—documentary evidence should only be utilised to elucidate the oral evidence of possession. 1920 M. W. N. 133.

—in case of conflicting evidence of possession the Magistrate may look to the evidence of title in combination with the evidence of possession. 7 C. 461: 8 C. L. R. 244, 13 C. 175, 25 B. 179, 15 L. W. 62: 1922 M. W. N. 12: 65 I. C. 853.

—but neither proof of title nor an adjudication on the question of title constitutes proof as to actual possession. 1928 Nag. 284: 111 I. C. 662: 29 Cr. L. J. 902.

—decision as to possession based solely on local inspection is bad. 1920 M. W. N. 133, 8 Pat. L. T. 755: 28 Cr. L. J. 603: 1927 Pat. 391: 132 I. C. 779, the order must be passed after discussion of the evidence. *latter case.*

—witnesses produced must be heard. 15 C. W. N. 114 (note).

—orders under s. 145 are admissible on general principles as well as under s. 13 Evi. Act, to show who were the parties to the dispute, what the land in dispute was and who was declared to retain possession. 29 C. 187: 6 C. W. N. 336: 29 I. A. 24: 4 Bom. L. R. 167, P. C.

S. 145. (6) Nature and evidence of possession—contd.

—where the landlord took possession of an abandoned holding by virtue of sec. 87 of the B. T. Act, he cannot be said to have taken forcible possession and no order can be passed against him. 31 C. W. N. 242 : 100 I. C. 117 : 28 Cr. L. J. 245 : 7 Cr. R. 357. 1927 Cal. 944.

—possession obtained by wrongful means but complete at the date of the order must be treated as actual possession. 32 Punj. Rec. (1897) 10.

—s. 145 (4) Cr. P. C. does not apply to peaceful though wrongful taking over of possession by a person, 1927 All. 476 : 28 Cr. L. J. 437 : 101 I. C. 469 : 7 Cr. C. 433.

—ouster of trespasser without recourse to violence and entry within two months is not unlawful and the subsequent taking possession of the land by force is of no avail. 44 C. L. J. 593 : 1927 Cal. 261 : 28 Cr. L. J. 210 : 99 I. C. 1010.

—where the party dispossessed moves the Court to take action but delay of over two months occurs before the Court makes order, the party dispossessed cannot be retained in possession on that ground. 1927 Mad. 816 : 28 Cr. L. J. 782 : 104 I. C. 110.

—the M. is to find peaceful possession, he must go back to the time when the present dispute originated and not to the result of the dispute itself. 4 C. 417.

—forcible possession within two months is wrongful dispossession within the meaning of the section and possession must be deemed to be in the party dispossessed. 20 C. W. N. 978.

—but when the M. finds that on the date of the institution of proceedings under this section and for more than two months preceding that date, the members of the first party have been and are in possession, although the members of the second party obtain delivery of possession of the property through Court a year ago, the M. should pass his order in favour of the first party. 49 C. 177, see also 22 C. W. N. 479, 1915 M. W. N. 55.

—to bring the case within the proviso of sub-section (4) the dispossession should be forcible as well as wrongful; the mere wrongful dispossession is not sufficient; it must be shown that it was forcible as required by the section; the remedy of the M. is in the Civil Court. 3

... force or violence should have been used to some person before the dispossession can be said to be forcible. Dispossession by show of criminal force is forcible dispossession. 25 C. W. N. 601.

—the words "forcible" and "wrongfully" have the same meaning as forcible entry without due warrant of law under the English Statute. A forcible entry must be wrongful unless it is in execution of a legal process. 23 Bom. L. R. 1353.

—the date of forcible possession must be determined. 1917 P. W. R. 28.

—whether the possession is wrongful when the rightful takes possession otherwise than peacefully. 94 I. C. 709 : 27 Cr. J. 681 : 1926 Bom. 91.

S. 145. (6) Nature and evidence of possession—*contd.*

—ouster or trespasser without the use of force cannot be said to amount to an unlawful entry on the land 44 C. L. J. 593 : 99 I. C 1010 1927 Cal 261 : 28 Cr. L. J. 210.

—the point of time as to the actual possession is the date of the original order 27 C. 785 : 4 C. W. N. 562.

—where owing to an order under s. 144 no evidence of possession within two months is offered by either party regard must be had to the previous possession. 4 C. W. N. 562. 27 C. 785.

—when the parties being members of the same family one party is in possession for himself as well as on behalf of the other party, order cannot be passed under this sec. declaring one party to be in possession. 23 C. W. N. 1051.

—a M. can rely on evidence partly recorded by his predecessor. 5 Pat. L. 237. 76 I. C. 25 : 25 Cr. L. J. 89, 37 C. L. J. 128 : 73 I. C. 265.

—reference to arbitration and the award thereunder cannot be the basis of a decision under s. 145. 3 Pat. 268 : 1924 Pat. 589.

—the order of the M. is binding on all the parties and the unsuccessful party cannot be allowed to disturb the possession of the other party without having recourse to law 27 C. W. N. 171 : 37 C. L. J. 39 : 71 I. C. 225

—a M. in deciding question of possession under this sec. is concluded by a previous order of the criminal court unless there has been a change of possession since the previous order. 95 I. C. 475 : 27 Cr. L. J. 815 : 1926 Lab. 479 (33 C. 33, 1922 C. 364) Dist

—settlement records are good presumptive evidence of possession but can be rebutted by subsequent decree of the civil court and the delivery of possession thereunder 5 Pat. L. T. 535 : 1924 Pat. 144, 37 C. L. J. 128.

—a M. can go behind the orders passed in favour of a party under the Survey and Settlement Act and the Bengal T. Act. 37 C. L. J. 128.

—when the land is included in the survey and settlement

.....

—order under s. 144, Cr. P. C. between the same parties are admissible to prove that there were those cases and not for relying on the finding as to the question of possession. 31 C. W. N. 310 : 100 I. C. 713 : 28 Cr. L. J. 329 : 1927 Cal. 327 : 45 C. L. J. 537.

—If documents are admitted in evidence without objection they may be objected to later if they are relied on to prove the possession of parties 31 C. W. N. 310 : 100 I. C. 713 : 28 Cr. L. J. 329 : 1927 Cal. 327 : 45 C. L. J. 537.

S. 145. Effect of civil court decree.

—in considering the question of possession the M. should not go behind the decision of the civil court between the same parties. When the decree is *inter partes* it does not matter whether the delivery of possession is actual or symbolical. 37 C. L. J. 256. 73 I. C. 53; 24 Cr. L. J. 517, 49 C. 177, 3 Pat. L. T. 335; 23 C. L. J. 321.

—in a proceeding under a. 145 a Magistrate cannot ignore the civil court decree though the court passing the decree had no jurisdiction over the land and whom the decree is *inter partes* it is immaterial that the delivery of possession is symbolical. 27 C. W. N. 267,

—civil court decrees are good and valid decrees until they are set aside and the criminal court cannot question the validity or legality of them 5 P. L. T. 535; 1924 Pat. 244 25 Cr. L. J. 88, 1924 Pat. 711, 91 I. C. 75. 27 Cr. L. J. 43

—the criminal court must uphold a recent delivery of possession by a civil court 71 I. C. 999. 1923 P. 76 24 Cr. L. J. 279, 4 Pat. L. T. 248; 72 I. C. 883, 24 Cr. L. J. 467.

—the M. is not in every case bound by the previous order of a civil or criminal court relating to the question of possession. The weight to be attached to them depends on the facts and circumstances of the case before him. When delivery of possession is recently given by the civil court it should ordinarily be respected unless something has happened subsequent to such delivery of possession. 4 Pat. L. T. 333 75 I. C. 363 24 Cr. L. J. 939, 24 Cr. L. J. 279; 71 I. C. 999.

—a civil court decree obtained against a tenant *ex parte* under which D. Hr. obtained only symbolical possession, is not binding in proceedings under the sec. 81 Ind. C. 928; 25 Cr. L. J. 1104.

—the decision of the civil court on the question of possession is not conclusive in proceedings under this sec. 15 Cr. L. J. 663; 25 Ind. C. 991.

—a civil court decree is presumptive proof of possession. 8 C. W. N. 719; 32 C. 796, 33 C. 33. 10 C. W. N. 257, 25 C. 625; 3 C. W. N. 461, 26 C. 625, 32 C. 796, 6 Bom. L. J. 246, 2 A. L. J. 274.

—possession may be presumed to be with the person who has taken symbolical possession in execution of a decree though it
C. L. R. 200, 25 W. R. Cr.
W. N. 461, 24 B. 527, 22
55, 2 C. L. J. 147.

—a decree passed *ex parte* under which only symbolical possession was delivered, or one which was not *inter partes* is not binding on the criminal court. 81 I. C. 928; 25 Cr. L. J. 1104.

—but where a civil court decree obtained *ex parte* is assailed on fraud, the criminal court need not go into the question of fraud and should act upon the civil court decree. 10 Pat. L. T. 862.

—there cannot be any hard and fast rule in respect of the evidentiary value of the decision of the civil court. 5 Pat. L. T. 69; 75 I. C. 535; 25 Cr. L. J. 951.

—an order under this section does not affect the power of civil court. 22 A. 214; A. W. N. (1900) 22

S. 145. Effect of civil court decree—contd.

—where there is a civil court decree a Magistrate cannot compel the successful party to go back to the civil court and get something else; he must give effect to the civil court decree. 91 I. C. 75-27 Cr. L. J. 43.

(7) Effect of order under this sec. on subsequent civil suit and criminal case

—the fact that there was a proceeding under s. 145 Cr. P. C., that there was an enquiry into the latter and that there was a decision adverse to one of the parties is a relevant fact in a suit for possession in a civil court. 40 C. L. J. 30

—in proceedings under a. 145 the Magistrates have always upheld the possession given by the civil court; but possession given by the criminal courts cannot be treated in the same manner in which possession given by civil courts is treated under this sec. 2 C. L. J. 147

—although a Magistrate's order under this sec. confers no title, the fact of possession remains and the persons in possession can only be evicted by a person who can prove better right to possess. 4 Bom. L. R. 167: 29 C. 187 P. C.

—the onus is on
under the order has no

—an order under

not affect the power of

admissible in evidence to show the fact that such orders were made; they are also evidence of (1) who the parties were, (2) what the land in dispute was, (3) who were declared entitled to retain possession and it is admissible against every one when the fact of possession on the date of order has to be ascertained. 29 C. 187, P. C.

—an unsuccessful party in a proceeding under this sec. cannot be said to have been *dispossessed* under s. 9 of the Specific Relief Act, 7 C. L. J. 547, but where the plff. was forcibly dispossessed by the deft, whose possession was maintained by the criminal court under this sec the plff. is entitled to sue under a. 9 Specific Relief Act. 30 A. 331.

—where proceedings are initiated under a. 145 by a party who was eventually unsuccessful it is not open to the successful party to sue for damages. The damages are remote and are sufficiently compensated by any order for costs that might be made in the proceedings. 20 A. L. J. 205: 65 I. C. 513.

—where the petitioners were convicted under a. 379 I. P. C. for having cut and taken away the opposite party's paddy and there was a prior order under a. 145 Cr. P. C. declaring the latter's right to possession, held that the accused could show by adducing evidence that he was in actual possession in spite of the order as to possession. 31 C. W. N. 961: 1927 Cal. 701: 104 I. C. 413. 23 Cr. L. J. 827.

S. 145. (8) Illegal orders.

party simply because possession under the party was not party

possession of the 2nd party but directed that some portion of the land would remain in their possession the order was illegal. 17 C. W. N. 793

—the Magistrate should see possession only and it is illegal to pass an order directing a *bundh* to be removed or to pay compensation and costs. 32 C. 602 : 9 C. W. N. 862.

—where the possession was found in favour of the 2nd party as evidenced by title deeds of 10 years previous to the proceeding without taking further evidence as to whether that possession continued, the order was illegal. 19 C. L. J. 356.

—only memorandum of evidence is insufficient to pass an order under s. 145. 19 C. W. N. 124.

—when the order is based on local inspection only, it is bad. 4 C. W. N. 779, 5 C. W. N. 71, 6 C. W. N. 925, 7 C. W. N. 510 : 30 C. 918, 8 C. W. N. 642, 23 C. W. N. 750, 24 B. 527, 9 W. R. Cr. 64.

—an order is bad when it is based on documentary evidence only. 5 W. R. 79, 7 W. R. 3, or on evidence recorded in another case. 13 A. 362 or on the written statements of parties and local enquiry. 7 B. L. R. 322, 16 W. R. Cr. 13, 25 W. R. Cr. 21, 4 C. W. N. 779, 12 C. W. N. 771, or on the report of Ameen, 20 W. R. Cr. 51 or when it is passed without hearing arguments of the parties. 19 Cr. L. J. 741.

—order directing the police to take charge of crops. 9 C. W. N. 125 or to make them over to a party, 2 C. L. J. 67 n. is illegal.

—an order to cause disputed lands to be demarcated by boundaries is illegal. 27 A. 300 : 1 A. L. J. 619 : A. W. N. (1904) 264.

—an order prohibiting the collection of rent till the decision of the rights of the parties by the civil court is illegal. 9 C. W. N. 76 (note).

—dropping of proceedings under s. 107 and continuing proceedings under s. 145 without the initiatory order is illegal. 32 C. 552, 30 C. 112, 115, 30 C. 200 F. B., 28 C. 416, 20 C. 520, 25 A. 537, 24 B. 527, 6 C. W. N. 923, *contra*. 30 A. 41.

—where an order is passed under s. 107 or 145, the paddy should be kept in. 15 C. W. N. 254 (note).
given the order is bad.

—the M. must give a statement of the reasons for his decision sufficient to enable the H. C. to determine whether he has complied with sub-sec. (4) and whether he has directed his mind in the consideration of the effect of the evidence adduced. 39 C. L. J. 366 : 81 Ind. C. 939.

—failure to make an order in writing as required by s. 145 (1) makes the procedure irregular but the defect is curable by s. 537

S. 145 8) *Illegal orders—contd.*

where no party has been prejudiced. 84I nd. C. 543 : 3 Bnr. L. J. 256

—where the proceedings were initiated in respect of certain extent of land but the final order was passed with reference to larger extent, the order as to the excess was without jurisdiction. 1924 Pat. 549 : 3 P. 289.

—order retaining both the parties in possession of different parts of the land is not bad. 11 C. W. N. 51.

See other cases under the heading "Procedure" infra.

(9) Ss. 107, 144, 145 and 147, which will apply.

Ss. 107, 145.

—where a dispute relating to possession of land is likely to cause a breach of the peace, a Magistrate has a discretion to proceed either under s. 107 or under ss. 144 and 145. 32 C. 966, 39 C. 150, 36 M. 315, 24 C. W. N. 1075, 7 C. W. N. 746 and 26 M. 471 *foli.* 7 C. W. N. 142 *not foll.* 1922 Pat. 435 F. B. Dist.

—where the Magistrate found that there was likely to be some dispute regarding the possession of the waste land on which a *pujah* was attempted to be performed, the proper course was to institute proceedings under s. 145. 6 C. W. N. 83, 25 C. 559, 7 C. W. N. 29, 24 W. R. Cr. 67, 25 W. R. Cr. 74.

—when breach of the peace is found to be contingent upon an attempt by either of the parties in dispute to exercise acts of possession upon a disputed piece of land the M. should proceed under ss. 145, 146 and not under s. 107. 7 C. W. N. 29, 142, 25 A. 537, 540, 25 C. 559, 3 C. W. N. 453, 6 C. W. N. 883, nor under s. 144, 11 C. W. N. 271.

—while it is discretionary with the M. to draw up proceedings under s. 107 the proper course, when there is *bona-fide* dispute as to lands, is to proceed under s. 145. Otherwise, the effect would be to bind down one of the parties only to the dispute without any adjudication upon the question as to which of the two parties is in possession. 6 Pat. L. T. 765 : 20 L. C. 442 : 1925 Pat. 110 : 26 Cr. L. J. 1762, 1922 Pat. 435 F. B. *fol.* 32 C. 966 and 7 C. W. N. 746, Dist.

—where the dispute is not one concerning land but it is concerning some other right s. 107 proceeding is more appropriate. 32 C. L. J. 54.

—If there is such a dispute between the parties leading to a breach of the peace, proceedings may be drawn up under s. 107. Cr. P. C. 42 C. L. J. 127.

—where there is a *bona-fide* dispute relating to a fishery right, the proper course is to proceed under s. 145 and not under s. 107. 35 C. 117.

—it cannot be held as a general rule that by the provision of the Cr. P. C. a M. is deprived of jurisdiction under s. 107 in a case in which the dispute likely to cause a breach of the peace relates to possession of land. 7 C. W. N. 746, 32 C. 966, 26 M. 471.

S. 145. (9) Ss 107, 145—*contd.*

—where there is a *bona fide* dispute as to the right to the possession of land between two rival parties, giving rise to a likelihood of a breach of the peace, it is unfair to bind down only the party who happens to be in possession under s. 107, to keep the peace, the proper order in such a case would be to bind down both the parties under s. 107 or to institute proceeding under s. 145, 12 C. W. N. 606, 35 C. 117, 19 Cr. L. J. 712 (Pat.), 1 C. L. J. 632, 23 Cr. L. J. 123 (c), 22 Cr. L. J. 574. (Pat.)

—the words in s. 145, are mandatory while the language in s. 107 is discretionary. 35 C. 117, 25 C. 559 *fol.*

—in a proceeding under s. 145 the magistrate cannot, on taking evidence, pass an order under s. 107, 10 C. W. N. 170 (note).

—where both parties are included in the term *public* it becomes a question of joint possession and it is in the nature of an easement and proper proceeding should be to take cognizance under s. 144 and not under s. 145 17 C. W. N. 205; 17 C. L. J. 379.

—whether after proceeding under s. 107 it will be proper for a Magistrate to act under s. 145, depends upon the circumstances of each case 39 C. 569, 16 C. W. N. 83; 14 C. L. J. 429, 34 A. 449.

—an order under s. 107 is no bar to a subsequent proceeding under s. 145, 39 C. 469, 21 C. W. N. 160, 36 A. 143, 16 C. W. N. 384 and *vice versa*, 36 M. 315, 24 O. C. 21 but to institute proceeding under one section and to pass order under another is illegal, 14 A. L. J. 794, 19 Cr. L. J. 320 (Pat.)

—the Magistrate can continue proceedings under s. 145 even after an order under s. 107. 21 O. W. N. 160.

—where the circumstances require, the M. may take proceedings under s. 145 after an order under s. 107 39 C. 569; 16 C. W. N. 384. 14 C. L. J. 429, 34 A. 41.

—except in grave emergency s. 145 is the proper sec. 18 Cr. L. J. 942; 42 I. C. 327. (Bur.) (26 M. 471, 32 C. 966, 11 C. W. N. 271) *Ref.*

—where there is dispute as to the possession of the property between the parties s. 145 is the proper s. 3 P. L. W. 353; 19 Cr. L. J. 113; 43 I. C. 401

—in case of dispute concerning the possession of land the proper course is to adopt s. 145. 21 Cr. L. J. 947; 75 I. C. 531; 1 Pat. L. R. 223, 3 Pat. L. T. 570; 23 Cr. L. J. 200; 65 I. C. 556, 23 Cr. L. J. 498; 68 I. C. 34; 2 Pat. L. T. 392, 2 Pat. L. T. 484; 63 I. C. 921; 22 Cr. L. J. 685, 1 Pat. L. T. 369, 57 I. C. 449; 21 Cr. L. J. 625, 1 P. L. T. 377; 57 I. C. 662; 21 Cr. L. J. 646.

Ss. 107, 144, 145.

—the possession delivered by the civil court must be by the criminal court and by proceeding under s. 107 or 107 and

S. 145. (9). Ss. 107, 144, 145—*confd.*

by proceeding under s. 145. 1 Pat. L. T. 81: 57 I. C. 95: 1920 Pat. 124, 1 Pnt. L. J. 44 *Dist.*

—what the H. Court deprecates is the habitual and unjustifiable use of s. 144 as a substitute for Ss. 107 and 145. 1 Pat. L. R. 2: 3 Pat. L. T. 573: 23 Cr. L. J. 549: 63 I. C. 149 F. B.

—if after the expiration of the period of two months there is any likelihood of the fresh breach of the peace the proper course for the M. is to take proceedings under s. 107 Cr. P. C. 3 Pat. L. J. 130: 44 I. C. 589: 19 Cr. L. J. 365.

Ss. 144, 145.

—where a party in possession is dispossessed by another party who is subsequently helped by an order under sec. 144 against the party who was originally in possession, in a proceeding under s. 145, the period for which the injunction under s. 144 was in force against the latter party could not be excluded. 18 Cr. L. J. 302 38 I. C. 333.

—a M'a. initiation of proceeding under s. 144 Cr. P. C. and at a later stage intimating to the parties present in court his intention to draw up proceedings under s. 145, is not irregular. 4 Pat. L. W. 234: 44 I. C. 748: 19 Cr. L. J. 396, 33 C. 68 *fol.* 15 C. L. J. 267, 29 M. 373 *Appr.*

—s. 144 applies only if there is no doubt or dispute as to possession, if there is dispute s. 145 will apply. 2 Pat. L. T. 484: 63 I. C. 621: 22 Cr. L. J. 685: 1 Pat. L. T. 369: 57 I. C. 449: 21 Cr. L. J. 625, 1 Pat. L. T. 377: 57 I. C. 662, 3 P. L. J. 243: 47 I. C. 65: 19 Cr. L. J. 869, 11 C. W. N. 27.

Ss. 145, 147.

—when proceedings are started under s. 145 on the basis of Police report but during the trial it is found that the matter falls under s. 147, the court can convert the proceeding into one under that sec. 85 I. C. 654: 26 Cr. L. J. 558: 1925 Cal. 1022.

—disputes arising with reference to the right of worship in a temple falls under s. 147 and with reference to the possession of the temple comes under s. 145, 48 M. L. J. 528.

—where the dispute is relating to land underneath a completed *bund* near a *bil* and the only question was whether the land belonged to one party or the other the case came under s. 145 and not s. 147. There is distinction between a case of completed *bund* and a *bund* to be erected. 33 C. W. N. 1004.

(10) Transfer, Revision and Reference.

—the courts have power to transfer a case under s. 145. 23 C. 898, 28 C. 709: 5 C. W. N. 749, 2 C. L. J. 614, 24. A. 151, 4 Pat. L. T. 308: 73 I. C. 173.

S. 145. (10) Transfer, Revision and Reference—contd.

—a transfer by a M. not empowered to do so is an irregularity which can be cured by s. 529 Cr. P. C., 36 C. 370, 13 C. W. N. 530, 4 C. W. N. 821.

—a proceeding under a 145 does not constitute a criminal cause or matter and there is no jurisdiction under s. 526, to entertain an application for transfer of such proceeding, 8 S. L. R. 215; 16 Cr. L. J. 249, 5 C. W. N. 749, 18 C. W. N. 274, 6 Pat. 553; 1927 Pat. 351; 8 Pat. L. T. 716, 1925 Lab. 48, 76 I. C. 868; 25 Cr. L. J. 276 *Ref.* 154 P. L. R. 1914 *not fol.* 26 M. 181, *Contra*, 10 A. L. J. 27; 13 Cr. L. J. 452; 34 A. 533; 15 Ind. C. 84, 26 M. 188; 12 M. L. J. 91, 18 C. W. N. 393 *const.* 10 C. W. N. 1095

—s. 526 cl. (8) Cr. P. C. does not apply to a proceeding under s. 145 Cr. P. C. 34 C. W. N. 59; 1929 Cal. 778, 30 C. L. J. 331, 1929 Cr. C. 522.

—the H. C. has the power to transfer a proceeding under s. 145 to a Magistrate and the Magistrate order. 16 O. C. 192;

—a Magistrate cannot revise his own order 35 C. 350 12 C. W. N. 605.

—the order is final one and it is not open to the M. when passed to his successor to review it or set it aside in any way, 48 A. 258; 27 Cr. L. J. 466; 1926 All. 242; 24 A. L. J. 227; 93 I. C. 690.

—a district Magistrate has no power to set aside orders passed by a Subordinate Magistrate under s. 145. He can only refer the cases to the H. C. 83 I. C. 526; 26 Cr. L. J. 1166; 1925 Cal. 1234, 33 C. W. N. 723, 1929 Cal. 751; 1929 Cr. C. 385.

—when a subordinate Magistrate refuses to interfere the District Magistrate is competent to institute proceedings under this section if he is of different opinion. 29 C. 242, 6 C. W. N. 290, and even on the same materials. 43 C. L. J. 586; 97 I. C. 59; 27 Cr. L. J. 1033; 1926 Cal. 1049

—where the original proceeding before the subordinate M. is defective, the High Court may set it aside and order a new proceeding.

even if no notice was given to the opposite party, that being a mere irregularity. 33 C. W. N. 723; 1929 Cal. 751; 1929 Cr. C. 385

—a defect in the proceeding under s. 145 which renders it illegal is a ground for revision of the order by the H. C., A. W. N. (1905) 260, 9 P. W. R. 1915 Cr. 92 P. L. R. 1915, 1929 Mad. 847; 1929 M. W. N. 708.

—the High Court has no power to send for the record of a case which, in intention and in fact has been begun and continued under Ch. XII. 13 Cr. L. J. 495; 15 Ind. C. 495, 31 A. 150, 1 A. L. J. 113, 3 C. W. N. 49.

S. 145. (10) Transfer, Revision and Reference—contd.

—the H C can interfere in revision with an order purporting to be passed under s. 145 (1) giving no information as to the object of dispute and leaving the person quite in the dark as to the disputed property. 27 A. 296 : A. W. N. (1904) 234, 30 C. 443.

—the H C as a court of revision cannot interfere with the decision of the trial court with respect to the *factum* of possession so long as there is evidence supporting the finding. 93 I. C. 635 : 27 Cr. L. J. 471 : 8 Lah. L. J. 47.

—the H C is not to examine the evidence to consider whether the finding of the lower court under s. 145 Cr. P. C. can be sustained or not. 28 Cr. L. J. 901 : 105 I. C. 229 : 1928 Pat. 88.

—the absence of evidence on the record to show that a dispute likely to cause a breach of the peace exists cannot be sufficient grounds for the interference of the superior court, 28 Cr. L. J. 847 : 104 I. C. 463 : 1927 Oudh 359.

—the omission of the Magistrate in a proceeding under s. 145, to give effect to the presumption arising from the entries in a recently published Record of Rights is not a question of jurisdiction of the Magistrate and the High Court cannot interfere on that ground. 19 C. W. N. 123.

—s. 435 places proceedings under Ch. XII beyond the power of the H C to set aside the parties to their remedies in the
69, 36 M. 275 : 12 M. L. J. 439 :
17 C. P. L. R. 133, 25 B 179, 2
499, 18 C. W. N. 393.

—where there is initial want of jurisdiction, proceedings purporting to be under s. 145 are not really proceedings under it and the H C can interfere under s. 439 Cr. P. C. but in case of irregularities only interference can be only under s. 107 of the Govt of India Act. 71 I. C. 228 : 24 Cr. L. J. 100 : 1923 M. 60, 36 M. 275, 286, 41 A. 302, 37 M. L. J. 589, 27 M. L. J. 169, 17 C. W. N. 205, 40 C. 982, 32 C. 249, 2 L. W. 107, 3 L. W. 164, 12 L. W. 939, 38 M. L. J. 73 Ref.

—the H C has no power to award costs incurred before it on
ti case against an order passed
u " " 147, 45 M. 913 fol. *Contra*. 27
B J 661 : 1926 Bom. 91.

—the H. C. has no jurisdiction to entertain a petition for the appointment of a Receiver pending the disposal of a criminal revision petition preferred against an order under s. 145. 1925 M. W. N. 772 : 40 M. L. J. 593 : 22 L. W. 723.

—an order under s. 145 is not binding on persons who are not parties to the proceedings and such persons have no *locus standi* to apply in revision. 87 I. C. 923 : 26 Cr. L. J. 1035.

S. 146. (Power to attach subject of dispute).

—the Magistrate should consider the evidence fairly and judicially for the purpose
W. N. 910.

—there is no
to make independent
Magistrate by s. 146
opportunity de-

S. 146. (Power to attach subject of dispute)—contd.

cline to adduce evidence as to possession. In that case the M is to fall back on the information before him as to the breach of the peace and in the absence of material to protect the possession of one or other of the parties he must attach the property. 118 I. C. 326 30 Cr. L. J. 894 10 Pat. L. T. 867

—the M should be very reluctant to attach property under this sec as it is an act of confiscation. He should collect and consider the evidence 82 Ind. C. 367 5 P. L. T. 589.

—a Magistrate cannot attach property when there is no likelihood of the breach of the peace 2 A. L. J. 149, 9 C. W. N. 75 (note)

—the intention of the legislature is to maintain the *status quo* 9 C. W. N. 887, 1 C. L. J. 331.

—the property can be attached only on the ground that the Magistrate cannot satisfy himself as to which of the parties is in possession and not on his inability to decide on the rights of the parties 6 Bom. L. R. 723, 7 Bom. L. R. 18, 27 C. 785, 4 C. W. N. 655, 2 Weir 110, 1 C. L. R. 86, 213, 14 C. 361, 25 W. R. 68, 24 W. R. Cr. 40, 23 C. W. N. 910 20 Cr. L. J. 342, 21 C. W. N. 1039.

—a Magistrate cannot attach the property under this section without making inquiry 9 Cr. L. J. 212, 1 C. L. R. 213, or after refusing to grant time to the party to produce evidence 12 C. W. N. 896: 8 Cr. L. J. 202, or simply because that the party does not adduce evidence. 16 C. W. N. 1052: 40 C. 105

—an order passed under s. 146 (1) without any examination of witnesses although a number of them were present in court, is invalid. 35 C. L. J. 291: 69 I. C. 273 23 Cr. L. J. 688

—this section does not apply when there is no doubt as to the actual possession 3 C. L. R. 94.

—the section applies when neither of the parties is in possession. 9 C. W. N. 887: 1 C. L. J. 331

—a Magistrate has no jurisdiction under s. 146 on his finding that the contending parties are in joint possession. 27 M. L. J. 169, 15 Cr. L. J. 572.

—where each party is found to be in possession of different portions of the disputed land the Magistrate cannot attach it under the sec. 9 C. W. N. 887: 1 C. L. J. 331, *contra*, 22 Cr. 297.

—if the component parts are distinct and separate the Magistrate may if necessary, deal with the different parts differently. 5 C. W. N. 710, 11 C. W. N. 198, 24 W. R. Cr. 73

—there must be proceeding under sec. 145 before an order under s. 146 cannot be passed. 75 I. C. 80: 24 Cr. L. J. 880: 1923 Nag. 297.

—when there is boundary dispute over a narrow strip of land the Magistrate should not attach. 4 W. R. Cr. 26.

—an attachment under s. 146 can only be made after the M. has made a reasonable effort varying of course with the circumstances of each particular case, to decide the question as to the possession. 4 Pat. L. T. 441: 24 Cr. L. J. 754: 74, I. C. 258, 40 C. 105 *Ref.*

S. 145. (10) Transfer, Revision and Reference—*contd.*

—the H. C. can interfere in revision with an order purporting to be passed under s. 145 (1) giving no information as to the object of dispute and leaving the person quite in the dark as to the disputed property. 27 A. 296; A. W. N. (1904) 234, 30 C. 443.

—the H. C. as a court of revision cannot interfere with the decision of the trial court with respect to the *factum* of possession so long as there is evidence supporting the finding. 93 I. C. 635; 27 Cr. L. J. 471; 8 Lah. L. J. 47.

—the H. C. is not to examine the evidence to consider whether the finding of the lower court under s. 145 Cr. P. C. can be sustained or not. 28 Cr. L. J. 901; 105 I. C. 229; 1928 Pat. 88.

—the absence of evidence on the record to show that a dispute likely to cause a breach of the peace exists cannot be sufficient grounds for the interference of the superior court. 28 Cr. L. J. 847; 104 I. C. 463; 1927 Oudh 359.

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—s. 435 places proceedings under Ch. XII beyond the power of the H. C. in revision, but as to the parties to their remedies in the
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—where there is initial want of jurisdiction, proceedings purporting to be under s. 145 are not really proceedings under it and the H. C. can interfere under s. 439 Cr. P. C. but in case of irregularities only interference can be only under s. 107 of the Govt of India Act. 71 I. C. 228; 24 Cr. L. J. 100; 1923 M. 60, 36 M. 275, 286, 41 A. 302, 37 M. L. J. 589, 27 M. L. J. 169, 17 C. W. N. 205, 40 C. 982, 32 C. 249, 2 L. W. 107, 3 L. W. 164, 12 L. W. 939, 38 M. L. J. 73 *Ref.*

—the H. C. has no power to award costs incurred before it on the hearing of a Criminal Revision case against an order passed under Chap. XII, 48 M. 262 86 I. C. 147, 45 M. 913 *fol Contra*. 27 Bom. L. R. 1353, 94 I. C. 709; 27 Cr. L. J. 661; 1926 Bom. 91.

—the H. C. has no jurisdiction to entertain a petition for the appointment of a Receiver pending the disposal of a criminal revision petition preferred against an order under s. 145. 1925 M. W. N. 772; 40 M. L. J. 593; 22 L. W. 723.

—an order under s. 145 is not binding on persons who are not parties to the proceedings and such persons have no *locus standi* to apply in revision. 87 I. C. 923; 26 Cr. L. J. 1035.

S. 146. (Power to attach subject of dispute).

—the Magistrate should consider the evidence fairly and judicially for the purpose of arriving at a decision. 23 C. W. N. 910.

—there is no obligation imposed on the Magistrate by s. 146 to make independent inquiry, if the parties, having opportunity de-

S. 146. (Power to attach subject of dispute)—*contd.*

cline to adduce evidence as to possession. In that case the M is to fall back on the information before him as to the breach of the peace and in the absence of material to protect the possession of one or other of the parties he must attach the property. 118 I. C. 326; 30 Cr. L. J. 894; 10 Pat. L. T. 867.

—the M should be very reluctant to attach property under this sec. as it is an act of confiscation. He should collect and consider the evidence. 82 Ind. C. 367; 5 P. L. T. 589.

—a Magistrate cannot attach property when there is no likelihood of the breach of the peace. 2 A. L. J. 149, 9 C. W. N. 75 (note).

—the intention of the legislature is to maintain the *status quo*. 9 C. W. N. 887; 1 C. L. J. 331.

—the property can be attached only on the ground that the Magistrate cannot satisfy himself as to which of the parties is in possession and not on his inability to decide on the rights of the parties. 6 Bom. L. R. 723, 7 Bom. L. R. 18, 27 C. 785, 4 C. W. N. 655, 2 Weir 110, 1 C. L. R. 36, 213, 14 C. 361, 25 W. R. 68, 24 W. R. Cr. 40, 23 C. W. N. 910; 20 Cr. L. J. 342, 21 C. W. N. 1039.

without	property under this section
refusing	1 C. L. R. 213, or after
N. 896:	adduce evidence 12 C. W.
adduce e	that the party does not
	105

—an order passed under s. 146 (1) without any examination of witnesses although a number of them were present in court, is invalid. 35 C. L. J. 291; 69 I. C. 273; 23 Cr. L. J. 688

—this section does not apply when there is no doubt as to the actual possession. 3 C. L. R. 94.

—the section applies when neither of the parties is in possession. 9 C. W. N. 887; 1 C. L. J. 331.

—a Magistrate has no jurisdiction under s. 146 on his finding that the contending parties are in joint possession. 27 M. L. J. 169, 15 Cr. L. J. 572.

—where each party is found to be in possession of different portions of the disputed land the Magistrate cannot attach it under the sec. 9 C. W. N. 887; 1 C. L. J. 331, *contra*, 23 Cr. 297.

—if the component parts are distinct and separate the Magistrate may, if necessary, deal with the different parts differently. 5 C. W. N. 710, 11 C. W. N. 193, 24 W. R. Cr. 73.

—there must be proceeding under sec. 145 before an order under s. 146 cannot be passed. 75 I. C. 80; 24 Cr. L. J. 880; 1923 Nag. 297.

—when there is boundary dispute over a narrow strip of land the Magistrate should not attach. 4 W. R. Cr. 26.

—an attachment under s. 146 can only be made after the M. has made a reasonable effort varying of course with the circumstances of each particular case, to decide the question as to the possession. 4 Pat. L. T. 441; 24 Cr. L. J. 754; 74 I. C. 259, 40 C. 103 *Ref.*

S. 146. (Power to attach subject of dispute)—*contd.*

—it is the duty of the M. before attaching property to make some inquiry in order to ascertain, if possible, who was in possession. Where no inquiry is at all made the order of attachment cannot stand. 3 P. L. T. 434: 66 I. C. 421: 23 Cr. L. J. 277

—where the order is passed without taking evidence of any kind it is without jurisdiction. 32 C. W. N. 843: 1928 Cal. 703: 30 Cr. L. J. 802: 117 I. C. 600.

—the M. cannot pass an order of attachment when the dis.

... this sec-
written
s had ex-
A. 144:
16 A. 233,
31 A. 150, 26 A. 144.

—the Magistrate cannot pass an order in a dispute between parties whose rights will have to be decided by a Revenue Court, 15 A. 394.

—it cannot be laid down as a general rule that no order of attachment under s. 146 can be made in respect of the disputed property simply because one party has been bound down under s. 107. 16 C. W. N. 384

—an order is illegal when no written judgment is passed. 15 C. W. N. 71 (note).

—'crops' in s. 145 (2) being limited to standing crops attached to the land, a magistrate cannot attach crops cut and stored. 30 C. 110.

—where certain immovable and movable properties belonging to a Math in dispute were attached and it was found that the movable property was appurtenant to the Math the attachment thereof was held to be valid. 93 I. C. 157: 24 A. L. J. 383: 27 Cr. L. J. 429: 1927 All. 125.

—in certain cases local inspection is very necessary. 15 C. L. J. 267.

—after the final decision of the civil court the magistrate cannot retain the profits derived from the attached property 1893 A. W. N. 100.

—for the purpose of limitation, the seizure or legal possession

—the Magistrate remains in possession of the attached property on behalf of the true owner. 32 C. 856.

—the only order of attachment or appointment of Receiver need not be set aside by suit. 111 I. C. 152: 1929 Mad. 38.

S. 146. (Power to attach subject of dispute)—*contd*

—if limitation has already begun to run, the attachment does not give a fresh starting point. 5 C. W. N. 160

—where the civil court has already determined the rights of the parties and also determined the possession so far as it was in its power, an order under s. 146 is unjustifiable and must be set aside 48 A. 397 : 93 I. C. 1055 : 27 Cr. L. J. 559 : 1926 All. 685.

—a Magistrate ceases to have authority to retain the property after a competent civil court has determined the rights of the parties 15 Cr. L. J. 500 : 24 Ind. C. 588.

—the Magistrate should withdraw the attachment as soon as it is brought to his notice that a competent court has determined the rights of the parties thereto or the person entitled to possession. 17 M. L. T. 392.

—a M. has jurisdiction to withdraw the attachment and make over possession of the property to a party in whose favour a decision has been pronounced by the civil court. 39 C. L. J. 353 : 81 Ind. C. 553 : 25 Cr. L. J. 937.

—but it is not open to the Deputy M. attaching property or to the Dt. M. to review the order of attachment or to hand over possession of the property to one of the parties 3 Pat. L. T. 648 : 68 I. C. 402 : 23 Cr. L. J. 562.

—when the Magistrate during attachment finds the property to be in the possession of a third person (landlord) he should withdraw the attachment. 24 W. R. Cr. 40.

—once an order under this section is passed it can come to end only under one of the two circumstances, the first being that there is no longer any likelihood of a breach of the peace in regard to the subject-matter of the dispute and the second being that a competent court has determined the rights of the parties to the proceedings or the person entitled to possession of the subject-matter of the dispute. 30 C. W. N. 646 : 1926 Cal. 316 : 87 I. C. 975 : 26 Cr. L. J. 1055.

—after releasing the property from attachment the Magistrate may re-attach it by starting *de novo* proceeding if on the appearance of a third claimant a breach of the peace is apprehended. 25 W. R. Cr. 68.

—attachment after adding new parties in the course of the proceeding under s. 145 was held to be bad as it affected the possession of the party newly added. 4 C. W. N. 83 (note).

—order of attachment binds persons who are parties to the proceedings under s. 145. 3 C. W. N. 329, 5 C. W. N. 105.

—disobedience to an order passed under this section is not an offence under s. 183 I. P. C. 8 M. L. J. 253, but a trespass upon attached property is punishable under s. 447 I. P. C. 8 M. L. J. 253.

—Session Court has no power to interfere with the order of the M. 15 W. R. Cr. 1.

—the H. C. on revision can make the order which the lower Court ought to have made 14 C. 361, 18 M. 41, 22 C. 297.

S. 146. (Power to attach subject of dispute)—contd.

—the High Court cannot on revision interfere with the management of the property. 29 C. 382

—what is required of the plff. who comes to court after an attachment of lands under s. 146, is to show to the court that he has got rights in the lands and is entitled to possession thereof. The plff. may acquire such rights by taking lease of the attached land from landlord who has granted *namaldastak* to a third party. 84 Ind. C. 386; 1924 Pat. 297; 6 Pat. L. T. 465

—the words "competent court" are not confined to 'competent civil court,' it includes Revenue Court directing mutation of name which entitles a person to possess the property within s. 146 (1). 82 Ind. C. 170; 21 A. L. J. 803, 46 A. 879; 1924 A.H. 777.

—the expression "competent court" in s. 146 (1) is wide enough to cover a Revenue court. 22 A. L. J. 803; 82 I. C. 170; 25 Cr. L. J. 1242.

—but an entry in the finally published record of rights cannot be regarded as constituting the final adjudications of a competent court. 30 C. W. N. 646; 1926 Cal. 316; 87 I. C. 975; 26 Cr. L. J. 1055.

—a deft. in a suit for mesne profits cannot be regarded as having been in possession of land during the period that it remains under attachment under this sec., 83 Ind. C. 529 (C).

—where the properties were attached by the M. under s. 146, and subsequent to that it was decided by the civil court between third person and some of the members of the 2nd party that the latter had no right to the property, the M. had jurisdiction to pass an order of withdrawal of the attachment on the application of the 1st party. 39 C. L. J. 353; 81 I. C. 553; 25 Cr. L. J. 937.

—the criminal court after attaching the property under this sec. is *functus officio*. 73 I. C. 153; 24 Cr. L. J. 537.

Appeal and Revision.

—but when the Magistrate acts without jurisdiction the H. C. has the power of revision. 25 A. 315; A. W. N. (1902) 74; 26 C. 625.

—only in cases in which a Magistrate has acted without jurisdiction, or improperly declined to exercise jurisdiction, the High court has the right to interfere with proceedings under s. 145. 30 C. 155; 6 C. W. N. 737. F. B., 74 I. C. 258; 4 Pat. L. T. 441.

—the High Court should not, except for very special reasons interfere on the revision side in cases under s. 145 Cr. P. C. 13 P. W. R. 1912 Cr. 193 P. L. R. 1912; 13 Cr. L. J. 719, 9 C. W. N. 1046 F. B., 32 C. 1093, 33 C. 33.

—no hard and fast rule can be laid down as to when the H. C. should interfere with the judgment of a M. on the ground that the order is brief and does not state reasons at length. 37 C. L. J. 127; 73 I. C. 271; 24 Cr. L. J. 575.

—the H. C. has jurisdiction to interfere in cases of grave and material irregularity. C. W. N. 1917 Pat. p. 1.

S. 146. Appeal and Revision—contd.

—the Chief Court will not interfere in revision with the order of a Magistrate under s. 145, where it is convenient and necessary to do so, even though such order is based on irregular procedure. 15 P. W. R. 1914 Cr.; 68 P. L. R. 1914; 15 C. L. J. 27, 25 W. R. 47. *Ref.*

—where a Magistrate is competent to try a case under s. 145, the fact that he has no local jurisdiction over the matter will not make the case come within s. 530, 5 C. W. N. 686

—cl 7 regulates only the proceedings under the section and it cannot be applied to revisional proceedings before the H. C. 17 Cr. L. J. 389

—the H. C. or the S. J. cannot direct the institution of proceeding under s. 145 or revival of such proceedings when they have been stayed by the Magistrate. 30 C. 112, 23 W. R. 58 Cr.. 20 C. 520, 9 W. R. 64 Cr

S. 147. Disputes concerning easements.

Changes introduced by the amendments are.—(1) *subject matter of dispute has been clearly defined* (2) *procedure to be adopted by the Magistrate has been specifically stated* and (3) *continuance of the order has been determined by the decision of the competent civil court.*

—sub-sec. (2) as amended does not give a Magistrate any power of directing one of the parties to do a positive act by way of mandatory injunction. This power is analogous to that of the civil court to grant temporary injunction. 41 C. L. J. 568; 30 C. W. N. 238; 1925 Cal 991; 88 I. C. 1041; 26 Cr. L. J. 1265.

—under Cl. (2) it is clear that where a right exists the M. may make an order prohibiting any interference with its exercise. 1929 Pat. 351; 1919 Cr. C. 153; 10 Pat. L. T. 376.

—a M. has no jurisdiction under the amended sec. to direct a party to demolish a new wall and air from other's house. Cal 991; 83 I. C. 1041, 5 C. L. J. 1265.

—no order can be passed to a finding that the right has been exercised within the period. 81 Ind. C. 708; 5 P. L. T. 457; 25 Cr. L. J. 996.

—proceedings amended must be notified. 81 Ind. C. 162.

—inclusion of a further portion of the pathway without notice to the party affected, vitiates the final order. 1925 Cal. 263.

—in the absence of finding that the right has been exercised within the periods specified by s. 147, the final order cannot be maintained. 5 P. L. T. 457; 81 I. C. 708; 25 Cr. L. J. 996; 2 Pat. L. T. 364. *fol.*

—bringing on record new applicants after a preliminary order has been made is inadmissible. 10 Pat. L. T. 376.

S. 147. Dispute concerning easement—contd.

need not be given as the actual right of the parties must await the determination of a civil court. 95 I. C. 761 : 1926 Pat. 348 : 27 Cr. L. J. 841.

—proceedings under ss. 145 and 147 are criminal cases and a M. has power to transfer such cases under ss. 192 and 523 Cr. P. C. 4 Pat. L. T. 297 : 1 Pat. L. T. 195 : 24 Cr. L. J. 487 : 72 I. C. 951, but see notes under s. 145 *Transfer, Revision and Reference*.

—there is nothing in sec. 147 to limit its operation only to easements. The words "the right to do anything in or upon tangible immovable property" include also the right to fish in a *bhitl*. 23 C. 55, 21 C. 29, 727 Dist 2 C. W. N. 670 *Ref* 23 C. 557 *fol*.

—a claim of both a personal easement as well as a public right of way as regards pathway, though inconsistent, may be made by a party and either of them is capable of proof 1926 Pat. 348, 95 I. C. 761 : 27 C. L. J. 841.

—the magistrates ought not embark on inquiries under s. 147 in which it is certain that injustice may be done from defective procedure, unless they are satisfied that a real danger of the evil, for the prevention of which the procedure is devised, does in fact exist. 21 C. 727, 23 C. 557, 2 C. W. N. 670.

—the inquiry under s. 147 is a judicial inquiry and the opinion to be formed must be judicial one founded upon the evidence legally given before the magistrate under s. 356. 21 C. 727, 2 C. W. N. 670, 31 C. 48, 23 C. 55.

—in a case of disputed fishery rights in a creek if the matter in dispute has already been adjudicated upon by a Civil court, the Magistrate will have no jurisdiction to enquire into a claim which is entirely contrary to that court's decree. 29 Bom. L. R. 715 : 102 I. C. 546 : 28 Cr. L. J. 578 : 1927 Bom. 654.

—a Magistrate is competent to direct the removal of an obstruction to a right of way caused by the owner of the land if there be a likelihood of breach of peace in consequence. 5 C. W. N. 335, 39 C. 560 : 13 Cr. L. J. 184, 15 C. L. J. 267, 36 C. 923 : 14 C. W. N. 178 *Dist*.

—it is doubtful whether sec. 147 applies to a dispute relating to the right to use a public high way. 2 Weir 117.

—it is doubtful whether sec. 147 applies to cases of disputes regarding the right of carrying corpses along a public high-way. 6 M. L. J. 193, 21 M. L. J. 486 : 9 M. L. T. 209.

—a right to take a car in procession along a public road to a temple is a right of user of land which comes within the scope of sub-sec. (1) of s. 147. 89 I. C. 846 : 1925 Bom. 536 : 26 Cr. L. J. 1422.

—the question as to whether the Hindu community were entitled to use a public street, such user being obstructed by the Mahomedans living in the locality, comes under s. 147 1927 Mad. 985 : 1927 M. W. N. 789 : 28 Cr. L. J. 948, 53 M. L. J. 528 : 105 I. C. 660 : 51 M. 174.

S. 147. Dispute concerning easements—*contd.*

—e Magistrate need not formally record in his proceeding that there is in his opinion danger of breach of peace. 16 M. L. T. 427 : 27 M. L. J. 587, 2 C. W. N. 670.

—where in a case under this section regarding a dispute about watercourse e witness stated that there would be a fight if the other party would demolish a certain bund, the Magistrate was justified in holding that there was a danger of the breach of the peace and the proper course to adopt was to place both sides as established
a privy."

—where the Hindus prevented the Christians from exercising their right of taking water from a well, the Magistrate could pass an order under sec. 147 forbidding the Hindus from interference with the exercise of the right. 9 M. L. T. 209 : 21 M. L. J. 480 : 1911 M. W. N. 44, 6 M. L. J. 193 : 7 M. 49 Dist., 15 Cr. L. J. 509 : 26 M. L. J. 208 : 1914 M. W. N. 352 *Ref*

—where the Mahamedan residents in a village complained that the Hindus had been using the common well in the village in such a way as to make it impossible for the former to use it and the M. started a proceeding under s. 145 and not being satisfied with the evidence on behalf of either party, ordered attachment justified in preventing the should have considered the had the right to use it. 23 A.

—e Mahomedan cannot say his prayers on the property belonging to another without his permission. (9 I. C. 45) *fol.* The fact of enclosing a place by a wall negatives the idea that there is any permission. If right to worship at the grave does not exist then the ancillary right to go over the land to the grave cannot exist. 1925 Pat. 435 : 1925 P. H. C. C. 64 : 91 I. C. 76 : 27 Cr. L. J. 44 : 6 Pat. L. T. 857.

—a dispute arising with reference to the right of worship in a temple falls under s. 147 and with reference to the possession of a temple comes under s. 145. 48 M. L. J. 528 : 88 I. C. 2 : 1925 Mad 779 : 26 Cr. L. J. 1057.

—a proceeding under s. 145 can be converted into a proceeding under s. 147 Cr. P. C. 85 I. C. 654 1926 Cal. 1022 : 26 Cr. L. J. 558.

—when the erection of a bund has interfered with the right of easement of using water, sec. 147 applies. 28 C. 734 : 5 C. W. N. 67, 39 C. 560, 15 C. L. J. 267 *Fol.*, 36 C. 923 : 14 C. W. N. 178 *Dist.*

—the Magistrate may under s. 147 order the removal of a bund which obstructs the flow of water for the purpose of irrigation from a certain channel passing through a village. 5 C. W. N. 67 : 28 C. 734 : 5 C. W. N. 355 *Fol.*

—a Magistrate cannot add parties to a proceeding under sec. 147, any more than he can to proceeding under sec. 145. An order

S. 147. Disputes concerning easements—contd.

made after the addition of parties is not valid only against the added party but it is binding on those to whom it is properly directed. 28 C. 734 : 5 C. W. N. 67, 39 C. 560, 15 C. L. J. 267, 36 C. 923 : 14 C. W. N. 178 *Fol.*

—“a dispute concerning the use of any land” cannot be qualified and the sec. construed as if contained words that the user to which the dispute relates is a user by a party other than a person in possession. 29 M. 97 : 15 M. L. J. 394, 4 C. W. N. 779 not *Fol.* 7 M. 461 *Ref.* and *Fol.*

—the expression “land or water” is not confined to private property though it is so confined in s. 145 sub-sec. (1) 1927 *Msd.* 985 : 1927 M. W. N. 789 : 53 M. L. J. 523 : 28 Cr. L. J. 948 : 105 I. C. 660.

... really thought that notwithstanding within a week the likelihood ; competent to take action under sec. 147. A Magistrate can under sec. 147 direct the removal of obstruction to pathways. 15 M. L. T. 230 : 25 M. L. J. 223 : 1914 M. W. N. 394.

—a Magistrate has power to invoke the assistance of Police to carry out an injunction under sec. 147 to remove an obstruction. 39 C. 560 . 13 Ind. C. 1000, *Contra* 14 C. W. N. 179, 15 C. L. J. 267, 39 C. 560.

—sec. 147 is not confined to mere easement. The rule that in criminal cases courts are only justified in holding local inspection ... not apply to a case law to prevent the provided he records evidence. 15 C. L. J. 6 C. 923 : 14 C. W. N.

—in the absence of finding that the right was exercised within three months before the inquiry, an order under sec. 147 is without jurisdiction. 14 Cr. L. J. 303 : 19 Ind. C. 959.

—the expression “land” does not necessarily include building, so a dispute concerning the right to perform *Puja* by entering into a temple is not a dispute coming within the meaning of sec. 147. 14 C. W. N. 611.

—“such rights” mean rights as are claimed by either party 23 C. W. N. 956, 95 I. C. 761 : 27 Cr. L. J. 841 : 1926 Pat. 348.

—innocent breach of the peace only gives jurisdiction. 23 C. 557, 20 C. 513, 520, 7 C. 385, 10 C. 78, 5 C. 194, 22 W. R. Cr. 48, 25 W. R. 74, 11 B. 584.

—in a proceeding under sec. 133 no order can be passed under sec. 147. 15 C. W. N. 667.

—the Magistrate is bound to hear the evidence. 4 C. W. N. 779, 7 B. L. R. 332, 9 W. R. Cr. 64 and some evidence must be recorded, 7 C. W. N. 510 : 30 C. 918, 6 C. W. N. 925.

S. 147. Disputes concerning easements—*contd.*

—questions relating to ferries and to *Julker* rights come under sec. 147 and not sec. 145. 26 C. 18: 3 C. W. N. 148, 23 C. 557.

—a dispute relating to the right to collect *tollas* from a *hat* is a dispute coming under this sec. 21 C. W. N. 439.

—easement includes *profits a prendre*. e. g. right to take fish. 23 C. 55, 21 C. 29

—the onus is on the person who alleges the right. 11 C. 52. Sometimes it is better to bind down under sec. 107 instead of making an order under sec. 147. 23 C. 557, 21 C. 727.

—due notice must be given to persons who claim or deny the right. 21 C. 727.

—the proceeding must show the grounds of the Magistrate being satisfied as to the likelihood of breach of peace. 16 C. W. N. 99 (note).

Proviso.

—the expression "within three months next before the institution of the inquiry" in the proviso does not mean the date when the formal proceedings are drawn up 44 C. L. J. 214: 28 Cr. L. J. 1: 99 I. C. 33.

—the enquiry contemplated by the provision is one by the Magistrate and not by the police. So where a petition was filed before a M. for the obstruction of a pathway and the M. forwarded the same to the police for enquiry and passed orders on the body of the petition under s. 147, three months after, held that such an order was illegal as the inquiry was instituted three months after the date of the obstruction complained of. "Institution of the inquiry" did not begin on the date when the petition was forwarded to the police but only on the date when the proceedings were actually drawn up. 30 C. W. N. 863: 53 C. 851: 44 C. L. J. 307: 97 I. C. 353: 1926 Cal. 1051: 27 Cr. L. J. 1089.

—where the non-exercise of the right within the proper period was due to the circumstances beyond the control of the claimant this proviso cannot apply. 89 I. C. 846: 1925 Bom. 536: 26 Cr. L. J. 1422: 27 Bom. L. R. 1058.

S. 148. (Local inquiry).

—this sec.¹ does not necessarily imply that the trying Magistrate cannot hold the local inquiry. 5 C. W. N. 686: 15 C. L. J. 257, 72 I. C. 971: 1923 P. 31: 24 Cr. L. J. 507, 4 Pat. L. T. 297.

—an order under s. 148 must be made by a M. who tried the original case. 30 Cr. L. J. 252: 9 Pat. L. T. 835: 114 I. C. 193: 1929 Pat. 93.

—the person deputed must be a M. and not a *Kanungoe*, 7 C. L. R. 352 whose report cannot go in evidence without examining him as witness. 12 Cr. L. J. 450 (C).

—judicial officers are not permitted to find out the facts of a case by personal investigation, they must decide it on the evidence properly produced before them. 81 Ind. C. 602: 1 P. L. R. 256 Cr.: 1923 A. I. R. (Pat.) 537: 25 Cr. L. J. 954.

S. 148. (Local inquiry) — *contd.*

and apprehend the M.
cannot take
10 A. L. J.
may waive

made by a subordinate magistrata only, deals with delegation of judicial functions, and does not apply to the case of making a survey of the disputed land and preparing a map 1 Pat. 75 : 3 Pat. L. T. 17 : 65 I. C. 616 : 23 Cr. L. J. 152.

—under s 148 the report of the M. is evidence without proof unlike as in other cases where the Commissioner has to be examined to prove the report, *above case* and 20 Cr. L. J. 107 (Nag.), 21 W. R. 25.

—the scope of the local inquiry is extremely limited, it should be restricted solely to some questions relating to features of the property 3 C. L. R. 134, 24 Cr. L. J. 507 (Pat.).

—in cases where the levels of the fall of water are concerned 15 C. L. J. 267, where rights of irrigation and rights of taking water through particular reservoirs are concerned 4 P. L. T. 297, a local inspection is immediately necessary.

—the M. is not bound to hold local inquiry in every case 20 Cr. L. J. 17 (C).

—a deputed M. cannot delegate his power to another. 20 Cr. L. J. 107 (Nag.).

—the party affected by the report can rebut the report of the Magistrata deputed. 21 W. R. 25 Cr., 20 Cr. L. J. 107 (Nag.), 4 P. L. T. 297 : 24 Cr. L. J. 487.

—a Magistrate is not competent to make an order for the payment of cost without notice to the party concerned. 28 C. 302 : 5 C. W. N. 291, 10 C. W. N. 1030, 4 Cr. L. J. 232 : 29 M. 373, 14 C. W. N. 20, 71 I. C. 128 : 1923 M. 87 : 24 Cr. L. J. 80, 16 L. W. 613.

; M. to assume
ult of a civil suit
his complainant to
22 S. L. R. 386 :

111 I. C. 441 : 29 Cr. L. J. 857.

—where the M. awarded a sum of Rs. 100 as costs without any inquiry into the amount of the pleader's fees and witnesses' expenses, the order will be set aside as a M. cannot arbitrarily decide what the costs should be. 3 Pat. L. T. 484 : 23 Cr. L. J. 508 : 68 I. C. 44.

—a Magistrate can award cost incurred only for witness or pleader's fees or both but cannot award compensation for damages done to the crops. 32 C. 602 : 9 C. W. N. 862 : 2 Cr. L. J. 552.

—an order for cost is not illegal simply because it was not made at the time of pronouncing judgment in the proceedings under Ss. 145, 146 or 147 Cr. P. C., the order is good if it is made within a reasonable time and the H. C. will not interfere on the ground that

S. 148. (Local Inquiry)—*contd.*

they are excessive or deficient. 15 C. W. N. 811, 12 Cr. L. J. 376, 29 M. 373; 4 C. L. J. 232, 11 Cr. L. J. 335; 5 Ind. C. 243; 13 O. C. 66, 17 C. L. J. 348, 15 C. L. J. 267, 47 C. 947, 27 C. 757.

—additional costs for extra fees and travelling and other expenses of a like nature incurred for bringing pleaders, counsels from a great distance, should not be allowed 9 C. W. N. 887; 1 C. L. J. 331; 2 Cr. L. J. 408, 13 M. L. T. 224, *not fol.*, 13 Cr. L. J. 297; 14 Ind. C. 761 *Dist.*

—the wording of s. 148 (3) does not give the M. a discretion to refuse to recover the costs. 71 I. C. 254 - 1923 P. 57, 24 Cr. L. J. 126, 3 Pat. L. T. 762.

—a wide discretion is given to the magistrate as to the power to award cost and the H. C. has no power to interfere in revision. 9 C. W. N. 887; 1 C. L. J. 331, 13 M. L. T. 224 *not fol.*, 13 Cr. L. J. 297, *Dist.*

—the section does not authorise magistrate to award costs not mentioned in the sec. and which might be allowable under the much wider provisions of the Cr. P. C., 13 Cr. L. J. 297; 14 Ind. C. 761; 13 M. L. T. 224, 9 C. W. N. 887. 1 C. L. J. 331 *Dist.*

—when one magistrate who decides the case makes order for cost, another magistrate may assess the amount. 22 C. 384, 23 O. 37, 10 C. W. N. 1030 *contra* 21 C. 609, 22 C. 387, 13 O. C. 66; 11 Cr. L. J. 335

S. 149. Police to prevent cognizable offences.

—this section does not empower the police officer to pass any order he likes. 47 A. 205; 85 I. C. 823; 1925 All. 165; 26 Cr. L. J. 599.

—there should be a standard weight for comparison and some reasonable allowance should be made for wear and tear and for the rough and ready methods of bazar shopkeepers. 15 Cr. L. J. 11 1913 P. R. 20.

S. 151. (Arrest to prevent cognizable offences.)

—an arrest without emergency as contemplated by this sec. is illegal and the person arrested is entitled to offer resistance and has the right of private defence 1930 Lah. 348; 31 Cr. L. J. 294; 1930 Cr. C. 396; 31 Punj. L. R. 285; 121 I. C. 734, (24 C. 320, 1926 Lah. 19) *Rel. on.*

S. 154. Information in cognizable cases.

—the first information report is information received under s. 154 Cr. P. C. It is not information received after the commencement of investigation coming under ss. 161 and 162 Cr. P. C. 30 Cr. L. J. 33; 1929 Nag. 43; 112 I. C. 902.

—a statement made by a deceased person to the Police Officer after the latter had received a telephonic message from the hospital where the deceased was, is not a first information under this sec. but comes under s. 32 Evi. Act. 1930 Lah. 457; 31 Cr. L. J. 444 - 122 I. C. 491.

S. 154. Information in cognizable cases—contd

—in every trial, it is important that it should be known to the judicial officer what are facts given out immediately after the occurrence and reports to the police, and the object of the first information is to render him so acquainted. For that purpose the diary containing the first information is admissible in evidence as also any memorandum by the police officer of what the informant said 7 C. W. N. 345, 8 C. W. N. 218 Ref.

—the first information is of considerable value at the trial because it shows the starting materials of the investigation and the story first told; any statement recorded several days after the commencement of the investigation is not first-information and it has no value as it can be made to fit into the case as developed. 11 C. W. N. 554; 6 Cr. L. J. 86, 16 C. W. N. 145.

—information by choudidar, then by wife and then by son of the person against whom the offence was committed,—which is the first information? Erroneous admission of statement as first information does not affect the conviction if the court does not use it to help him to come to the decision as the accused cannot be said to have been in any way prejudiced 1928 Pat. 634; 29 Cr. L. J. 728; 110 I. C. 584.

—the first information is something in the nature of a complaint or accusation. 2 Pat. 517; 4 Pat. L. T. 463; 24 Cr. L. J. 841.

—first information report need not give every detail or any detail. It should be only sufficient to induce the police to leave the station and investigate the affair 1928 Lab. 913.

—but a telegram sent to the police that an offence has been committed cannot be such document. 1928 Mad. 791; 29 Cr. L. J. 717; 110 I. C. 461; 55 M. L. J. 231.

—first information is not evidence in the case. It is tendered by the Crown for such use as defence may be able to make out of it and to test the prosecution story. 15 C. W. N. 198

—first information should always be carefully and accurately recorded as its object is to show what was the manner in which the occurrence was related when the case was started. 16 C. W. N. 145; 13 Cr. L. J. 65; 13 Ind. C. 721, 16 C. W. N. 1105; 15 C. L. J. 517; 13 Cr. L. J. 609.

—first information must be the statement of the informant himself, above case, and not the reproduction of the statement of another person. 8 C. W. N. 218.

—a statement recorded in the course of a police investigation cannot be treated as a first information report. 27 Cr. L. J. 121; 91 I. C. 697; 1926 Lab. 179, 85 I. C. 650; 47 A. 280; 1925 All. 303; L. J. 554, but see 52 C. 499; 89 I. C. 732 below.

—a first information report was given by a person who eye-witness to the occurrence and it did not purport to name of all the culprits or even their exact number, the to mention some names is no ground to distrust the eye- 93 I. C. 1040; 27 Cr. L. J. 544; 1926 Lab. 369.

S. 154. Information in cognizable cases—*contd.*

—first information is not a piece of substantive evidence and can be used only as a previous statement admissible to corroborate
 14 Cr. L. J. 642 :
 1 303 : 65 I. C. 650,
 substantive evidence
 11 Lab. L. J. 1 : 30

—information received under s. 157 undoubtedly relates to
 under s. 154. 1914 M. W. N.

received" in sec. 157 refer to
 W. N. 326.

—first information of a case given by a person while in the custody of the police in another case is not admissible against him, 21 C. 392, nor the first information of an accused is admissible 19 Cr. L. J. 513 : 4 P. R. (1918) Cr.

—statements made to Police Officer under ss. 154 and 155 are privileged, i. e. cannot be made the subject of a charge of defamation. 41 A. 311.

—a false entry made by the police officer is punishable under s. 177 I. P. C. 20 M. 151.

—ordinarily when the witnesses named in the first information report are not produced by the prosecution and no explanation is offered therefor at the trial, the fact should be brought to the notice of the jury and their attention drawn to the presumption, which arises from such non-examination. 93 I. C. 46 : 1926 Cal. 728 : 27 Cr. L. J. 398

—when the first information report mentions the names of certain persons as not identified but merely suspected, it is not entitled to much weight. Identification on a dark night is of no weight. 93 I. C. 892 : 27 Cr. L. J. 492.

—list of stolen property handed over to the police during investigation is not admissible in evidence but first information is admissible to corroborate the informant when challenged. Maps prepared by police officers on information is not admissible. 85 I. C. 723 : 1925 Cal. 959 : 26 Cr. L. J. 679.

—no sanction is necessary to prosecute a false informant. 3 A. 322, 7 M. 292, 5 C. 184.

—the writing of information under s. 154 is a "public document" under s. 74 Evi. Act and its contents may be proved by a certified copy under s. 77 Evi. Act; the police officer being a "public servant" under s. 74, a certified copy should be given by the police officer having the custody of a document as provided by s. 76. U. B. R. 1893-1896, Vol. 1, 24.

—where the first information was recorded by a police officer some hours after he had begun investigating the case, but there was no previous information recorded and reduced to writing him, the report falls under s. 154. 52 C. 499 : 28 I. C. 733 : 26 L. J. 1213 : 1925 Cal. 831.

S. 154. Information in cognizable cases—contd.

—statements made in the course of police investigation merely because they happen to be signed contrary to the provision of sec. 162 do not thereby become admissible under s. 154. 1925 Mad. 106 : 25 Cr. L. J. 401. 77 I. C. 481.

S. 155 Information in non-cognizable cases.

—this sec. only relates to the powers of the police officer and confers no power or authority on magistrates to direct a local investigation by the police 12 B. 161

—a magistrate is empowered to refer a matter to the police for investigation under s. 155 Cl. 2 in cases of non-cognizable offences, and under s. 156 Cl. 3 in cases of cognizable offences. 8 Bom. L. R. 589 : 4 Cr. L. J. 183, 27 C. 455, 16 C. 421 and when he has reason to doubt the correctness of a police report in a non-cognizable case. U. B. R. 1914 2nd qr. 19 Cr.

—when the police investigates a non-cognizable case without the sanction of the Magistrate under s. 155 (2) Cr. P. C., the charge-sheet sent by the Sub-Inspector can be treated as a complaint under s. 190 (a). 29 Bom. L. R. 742 51 B. 498 : 1927 Bom. 440 : 105 I. C. 459 : 28 Cr. L. J. 939.

—it is incumbent upon the police officer to keep the diary when investigating a non-cognizable case under the orders of the M. 91 Cr. L. J. 517. 1918 P. R. 16.

—when a police officer receives information of the commission of a non-cognizable offence, he can instead of referring the s. 155 Cl. (1) report it to the the M. can order an investigation under s. 190. 5 M. L. T. 259, 17

—a pleader is not guilty of misconduct for using copies of documents improperly obtained when he is neither party nor privy to the securing of them. 10 C. 256.

—this sec. applies to the police in the town of Calcutta and Bombay. 15 C. 595, 21 B. 495.

S. 156. Investigation into cognizable cases.

—only a Magistrate and not a Sessions Judge is empowered to direct investigation by the police under s. 156 in a cognizable offence. 11 P. R. 1910 Cr., 184 P. L. R. 1910 : 16 P. W. R. 1910 Cr.

—on the presentation of a complaint the Magistrate is bound to investigate and proceed in the manner prescribed and no option to refer it to the police 1911 M. W. N. 74 : 12 Cr. L. J. 463.

—when a M. takes cognizance of a complaint under Cr. P. C. he cannot refer the case to the police for inquiry submitting a charge sheet to him if necessary ; it is necessary orders once he has taken cognizance of 54 C. 303 : 28 Cr. L. J. 577 : 102 I. C. 545.

S. 156. Investigation into cognizable cases—contd.

—but when the Magistrate takes cognizance of a private complaint it does not and cannot detain the police from inquiring into the offences from other persons and to file charge sheet and conduct the prosecution. 1928 Mad. 1268 : 114 I C. 365 . 30 Cr. L. J. 326

S. 157. Procedure where cognizable offences suspected.

—an inquiry can be made under s. 159 only on a report submitted within the terms of s. 157. 4 C. W. N. 351.

—to s. 157 there is no provision preventing the police of one police station from acting under that section in the jurisdiction of another police station. 12 P. R. 1915 Cr.

—where the police reported that the charge of the cognizable offence was false and that of the non-cognizable offence true, the Magistrate who accepted it could not subsequently, without further materials, order the police to send up charge sheet for a cognizable offence. 11 C. W. N. 832.

—report of the police officer in compliance with ss. 157 and 168 are not public documents under s. 74 Evi. Act and the accused cannot get the copies of them. 20 M 189

S. 159. Powers to hold investigation or preliminary inquiry.

—an inquiry can be made under s. 159 only on report submitted within the term of s. 157. 4 C. W. N. 351.

—statements made by the accused before a Deputy Magistrate, who was directed to investigate a murder case under s. 159, could not be admissible against the accused. 2 C. W. N. 702, 8 C. W. N. 221, U. B. R. (1903) 1st qr fol. and ref., 13 C. W. N. 197 : 9 C. L. J. 55 : 36 C. 281 Dist.

—under ss. 157 and 159, a First Class Magistrate can depute a Sub-Deputy M. to hold an investigation or a preliminary inquiry and the Sub-Deputy M. can under s. 161 (1) record a statement of witness made before him ; consequently this statement is admissible as a statement made in the course of an investigation. 40 C. L. J. 313 : 84 Ind. C. 45 : 1925 Cal. 161.

S. 160. Police Officer's power to require attendance of witnesses.

—this section does not empower the police officer to require the attendance of an accused to answer a charge, the disobedience to such an order cannot fall under s. 174 I. P. C. 2 Weir 120 : 7 M. 274 F. B., 4 Bom. L. R. 644, L. B. R. (1803-1900) 317.

—the intention of the legislature is to provide a facility for obtaining evidence and not for procuring the attendance of who may be arrested at any time. 7 M. 274 : 2 Weir 120 F. B.

—where the accused was taken into custody by the disobeying an order under s. 160, the police was guilty of confinement. 2 Weir 121.

—order under s. 160 must be in writing. Cr. R. 18 of 1896.

S. 100. Police officer's power to require attendance of witnesses—*confd.*

—a woman cannot be asked by the police to come to the police station for examination. 9 C. W. N. 199.

—police officer cannot enforce his order. 7 W. R. Cr. 3.

—disobedience to the order may lead to prosecution under s. 174 I. P. C. but a person required orally to attend cannot be punished under that section. 1 Weir 26.

—the police cannot take security-bond for the production of any person. 11 C. 77.

—summary procedure cannot be adopted in the midst of a trial as that causes prejudice to the accused. 26 C. W. N. 831.

—a Magistrate may issue a warrant for the production of a person to give evidence before the police during investigation. 24 C. 320; 1 C. W. N. 154.

S. 161. Examination of witnesses by police.

—when there is sufficient evidence against a person to justify his arrest, the statement made by him cannot be regarded except as a confession made before the police and so is inadmissible under s. 25 of the Evl. Act. 27 C. 295; 4 C. W. N. 129.

—a person examined under this sec. in respect of an offence of which he may himself be charged is not bound to state the truth. Rat. Un. Cr. 619; Cr. R. 43 of 1892.

—an investigation by the police under s. 161 is a stage of a judicial proceeding within the meaning of explanation 2 to s. 193 I. P. C., U. B. R. 1897-1901 Vol. 1, 31.

—it is exceedingly dangerous to appeal, from evidence judicially recorded under the sanction of cross-examination, to alleged statement made to the police which are not judicially recorded. 19 C. W. N. 217; 16 Cr. L. J. 313.

—copies of statements of witnesses to the police under this section should be supplied to the accused to cross-examine the witnesses. 36 C. 560; 2 Ind. C. 591; 26 M. L. J. 182.

—where a Police officer acting under this sec. took statements from persons who were afterwards called as witnesses, the accused person would be entitled to call for inspection of such documents and cross-examine the witnesses thereon as such statements would not amount to a portion of the diary. 16 C. 610, 19 A. 390; A. W. N. (1897) 174 F. B., 20 M. 189; 7 M. L. J. 167.

under this sec. form
172. 9 C. P. L. R. Cr.

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statements of witnesses recorded under s. 161 form no part of the Police diary referred to in s. 192. 9 C. P. L. R. Cr. 33; 23; 10 C. W. N. 890.

S. 161. Examination of witnesses by police—contd.

—the statements of witnesses under this section are not privileged even if inserted in the special diary, and s. 172 is not intended to include such statements. 20 C. 642, 16 A. W. N. 193, 13 O. C. 7; 11 Cr. L. J. 117, 9 C. P. L. R. 33 Cr., 19 A. 390; 17 A. W. N. 174, 16 C. 610, L. B. R. (1893-1900) 47, *contra* A. W. N. (1896) 193.

—refusal to answer questions is not punishable under ss. 176, 179 or 187. 1 P. C., 23 M. 544, 17 P. R. (1903) Cr., 9 Cr. L. J. 105; 40 P. W. R. 1903 Cr., 7 C. 121.

—the accused is entitled to an order for the production of statements of witnesses made under s. 161; if the Magistrate refuses to sanction the production of such statements it is an error on his part, which may make the judgment liable to be set aside. 16 C. 612 (note), 19 A. 390; A. W. N. (1897) 174.

—statements recorded in whatever form are recorded under s. 161 Cr. P. C. and the accused has the right to ask for a copy of such statements and to use them for the purpose of contradicting the witnesses for the prosecution. 32 C. W. N. 280; 1928 Cal. 260; 109 I. C. 355; 29 Cr. L. J. 531.

—no action for damages will lie against a person for his statement in answer to questions put to him by the police officer. 28 C. 794; 5 C. W. N. 804; 26 C. 852; 3 C. W. 538, 50 C. 80, 18 M. 235.

—the police officer is not bound to reduce any statement into writing, even if it be reduced into writing, oral evidence of such statements are not inadmissible under s. 9 Evi. Act 11 B. H. C. R. 120.

—a police officer may refresh his memory by looking to the documents, but the documents themselves cannot be used as evidence and the judge cannot read them to the jury to find out discrepancies. 9 C. 455, 11 C. L. R. 569, 31 C. 1050.

—if a witness makes a statement to the police under s. 161 Cr. P. C. that he knew nothing about the occurrence it is a statement under this section. 53 C. 980; 100 I. C. 553; 1927 Cal. 257; 28 Cr. L. J. 273.

S. 162. Statements to police not to be signed or admitted in evidence.

The amendments entitle the accused to obtain a copy of the statements made to the police by the witnesses except in some exceptional cases mentioned in the sec.

—this section entitles the accused to obtain a copy of statements made by a third party to the police, if such statements are recorded in writing and if the same are not made for either side of the case. If the statements are made for either side, writing it cannot be used for any purpose but one and that by the defence: Provided that the person who made it is called as a witness for the prosecution when the defence may use it to contradict that witness. 44 C. L. J. 253; 1927 Cal. 17, 96 I. C. 457; 27 Cr. L. J. 803; 1926 I. C. 367, 89 I. C. 252; 26 Cr. L. J. 1303.

S. 162. Statements to police not to be signed or admitted in evidence—*contd.*

accused the trial was not vitiated although there was a technical defect in not complying with s. 162 Cr. P. C. 45 C. L. J. 199 - 101 I. C. 478 : 1927 Cal. 372 : 28 Cr. L. J. 446

—“the statement of any person” mentioned in s. 162 refers to statement of any person examined as a witness and not to the statement of the accused 54 C. 237 : 28 Cr. L. J. 99 44 C. L. J. 253 - 99 I. C. 227 1927 Cal. 17, 94 I. C. 901, 86 I. C. 961 ; 26 Cr. L. J. 897, 86 I. C. 410 - 26 Cr. C. J. 778 1925 S. 237, 1926 Rang. 116 : 96 I. C. 145, F. B., 33 C. W. N. 257 : 118 I. C. 368 : 30 Cr. L. J. 916.

—the words “any such statement” in cl. (1) cover not only written statements but also oral statements. 51 M. 967 : 1928 Mad. 1028 : 55 M. L. J. 351. 112 I. C. 682 29 Cr. L. J. 1098 F. B., 4 Rang 72 fol. 48 M. 640 : 48 M. L. J. 195 *overruled*.

—a statement made before the police that the witness did not say anything to the police relating to the occurrence is not a “statement” within this section otherwise the result will be that the absence of a statement will be equivalent to a statement. But it is doubtful if a statement made by a witness to a police under s. 161 that he knew nothing about the occurrence is not a statement within the meaning of section 161 Cr. P. C. 53 C. 980 : 100 I. C. 353 28 Cr. L. J. 273 : 1927 Cal. 257.

—this section should not be construed to mean that while any part of the statement of a witness to the police may be used to contradict him, yet if the contradiction consists in this that a statement made at the trial was not made in any part of the statement to the police such a contradiction cannot be proved as that would be an artificial construction, 95 I. C. 396 : 27 Cr. L. J. 790, 1926 Pat. 362 : 7 Pat. L. T. 631.

—because a person of the accused party goes first to the Police Station and says that some of the complainant's party has committed an offence, so the real complaint lodged later on under s. 154 against the accused must be kept off the record save on terms under s. 162, this proposition is one which cannot be judicially approved. 1930 Cal. 130 : 1930 Cr. C. 130.

—statements made by a witness before the police cannot be admitted as corroborative evidence against the accused. 22 B. 596, 32 B. 111 F. B., 93 I. C. 230 : 27 Cr. L. J. 438 : 1925 Lab 353, *contra*, 13 C. W. N. 197.

—list of stolen ornaments handed over to the investigating Police officer is a statement within the meaning of s. 162 Cr. P. C. and is inadmissible. 1929 Cr. C. 71 : 1929 Cal. 448.

—a statement taken down in writing, of a witness for the prosecution, by a police officer, cannot be admitted
32 B. 111 : 9 Bow. L. J.

—a person charged in charge of an investigation may explanatory remarks in reference to his own conduct.

S. 162. Statements in police not to be signed or admitted in evidence—*contd*

may inferentially have reference to statements by witnesses. 1929 Cal. 298 : 30 Cr. L. J. 1015 : 119 I. C. 139.

—statements recorded at the confidential enquiry by C. I. D. officer into the offence of bribery are inadmissible as they were not made in the course of an investigation but as the misuse of them did not prejudice the accused the trial was not vitiated. 29 Bom. L. R. 996. 1927 Bom. 501. 8 A. I. C. R. 324 : 106 I. C. 100 : 28 Cr. L. J. 1012.

—as regards authenticity a telegram stands in no better position than village gossip. A statement to a police officer of a person who purported to send the telegram, or arrival of the police there is not one taken in the course of an investigation and is, therefore, admissible. 1928 Mad. 791 : 110 I. C. 461 : 29 Cr. L. J. 717 : 55 M. L. J. 231, 1925 Cal. 831 *Rel. on*.

—a brief statement of witness incorporated in the inquest report can be made use of under this sec. but apart from that it cannot be used as evidence. 1930 Lah. 457 : 31 Cr. L. J. 441, 122 I. C. 491.

—s. 162 forbids the use of police reports as evidence against the accused and prescribes the only way in which they can be properly used. 27 P. L. R. 1902.

—police proceedings are not standing by themselves substantial evidence and cannot be used to test the correctness of the statements made by witnesses on oath before the Court. Under this sec. the entries made in the Police diaries can be used for the limited purpose of contradicting the evidence of the witnesses for the prosecution and only when such entries have been duly proved. 1928 Lah. 820 : 29 Cr. L. J. 493 : 109 I. C. 221.

—s. 162 Cr. P. C. does not control s. 157 Evi. Act, oral evidence to the police by a witness in
36 C. 281 : 9 C. L. J. 199 : 13
I. F. B., contra. 26 Punj. L. R.
304. 3 Lah. 111.

—the general rule contained in s. 157 Evi. Act is controlled by the special provision of this sec. Not only is the record of the statement of a witness to the police taken under s. 161 excluded from evidence, but even the proof of such statement by oral evidence for the purpose of corroborating the prosecution evidence. 26 Punj. L. R. 304 : Lah. 171.

—looking to the plain language of s. 162, the writing only is excluded from evidence; but the right to prove any statement to the police by oral evidence to corroborate the testimony of any witness is not taken away by the section. 16 Bom. L. R. 603 : 2 Bom. Cr. C. 234, 35 M. 247 F. B., 36 C. 281 : 13 C. W. N. 197.

—the police cannot reproduce the contents of statements reduced into writing. 17 O. C. 7.

S. 162. Statements to police not to be signed or admitted in evidence—*contd*

—before the commencement of the preliminary inquiry against an accused person under remand, he is not entitled to copies of statements of various persons recorded by a magistrate under Ss. 162 and 161 of the Code. 30 M. 466 : 17 M. L. J. 471 : 3 M. L. T. 14.

—there is no provision similar to s. 173 which prohibits statements made under s. 162 to be used as evidence : if a witness at the preliminary inquiry has made previously a statement under s. 162, such statement may be used to contradict the witness and the accused will be entitled to a copy after commitment. 30 M. 466 : 17 M. L. J. 471 : 3 M. L. T. 14.

—statements made by an approver to the police before tender of pardon are covered by s. 162 Cr. P. C. and even if not so covered it can be used as previous statement either to corroborate or contradict the maker of it under the ordinary provisions of the Indian Evi. Act. 1923 Lah. 257 : 29 Cr. L. J. 348 : 108 I. C. 167 : 9 Lah. 389.

—when a witness made a statement to the committing M. and the accused failed to cross examine him and the witness died before the Sessions trial while the accused sought to cross examine the Police Sub-Inspector who recorded the statement of the deceased, held that it could not be allowed and s. 162 Cr. P. C. had no application. 51 C. W. N. 410 : 1927 Cal. 398 : 101 I. C. 661 : 28 O. L. J. 485 : 8 Cr. R. 131.

—s. 162 is clear enough to exclude any statement made by any person and therefore a statement by the investigating officer that he examined witnesses for the defence in the course of the investigation is not admissible. So also a map prepared by the Police containing the statements of witness is also inadmissible, as those statements were from what the Police officer heard from others. 30 C. W. N. 142 : 92 I. C. 174 : 27 Cr. L. J. 222 : 1925 Cal. 550.

—s. 162 in its present form overrides s. 27 of the Evidence Act. In determining whether the guilt of the accused has been proved it is necessary to ignore entirely all evidence which is held to be inadmissible under s. 162. 84 I. C. 545 : 26 Cr. L. J. 321 : 1925 Rang. 101, *contra*. S. 162, as revised does not override s. 27 of the Evidence Act. 21 L. W. 199 : 85 I. C. 664 : 1925 Mad. 574.

—statement of accused made in ignorance of criminal complaint lodged against him is admissible in evidence under ss. 25 and 26 of the Evi. Act. 111 I. C. 721 : 1923 Pat. 473 : 9 Pat. L. T. 449.

Act are quite independent of
treated as impliedly repealed
I. C. 664 : 21 L. W. 199 : 1925

—s. 162 (1) does not affect any statement as to the cause of death under s. 32 (1) of the Evi. Act ; it also deals with statement and not with conduct as under s. 8 of the Evi. Act. 51 C. 237 : 41 C. L. J. 253 : 99 I. C. 227 : 1927 Cal. 17 : 28 Cr. L. J. 99.

S. 162. Statements to police not to be signed or admitted in evidence—could

—there is no presumption as to the genuineness of the statements of the witness entered in the police-diaries and unless they are duly proved, evidence given in court cannot be contradicted thereby. 6 Lah 24: 26 Punj. L. R. 139.

—the use of the general and special diaries of the police for the purpose of either supporting the evidence of the prosecution or rebutting the argument of the defence is contrary to s. 162, 1925 Oudh 1

—statements of witnesses recorded in the police diary can be used for the purpose of contradicting witnesses in cross-examination. 104 I. O 242 1927 Oudh. 321: 28 Cr. L. J. 802: 4 O. W. N. 699.

—a conviction based on the fact that the evidence of witness tallied with the entries made in the police diaries as to what he is not proper as it amounts to an and a conviction based thereon 7 Cr. L. J. 614: 1926 Lah. 363.
refresh his memory from the diary.
could not insist. 8 C. 156: 10

—when the Sub-Inspector does not remember what witness states at the investigation and refuses to refresh his memory from the diaries, the court should compel him to look into the diaries. 1924 P. 829.

—If a Crown witness turns hostile, the Crown should be allowed to use the statement before the police under s. 155 Evl. Act. C. W. N. 1918 Pat. p. 95, 34 B. 599.

—the statement reduced into writing under this sec. is not public or official document and the writing in question cannot be used as evidence in any proceeding. 28 C. 348: 5 C. W. N. 65, 12 M. L. T. 1: 1912 M. W. N. 549, 15 A. 25, 22 B. 596, 32 B. 111 F. B., *contra*. 13 C. W. N. 197.

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ght, to be furnished with any copies of statement made to the police, and it is only if the Magistrate considers it expedient in the interest of justice to grant such copies that the accused can obtain or use such copies. 26 M. L. J. 182: 1914 M. W. N. 484, 36 O. 560, 33 C. 1023. These rulings are obsolete on the face of the amendment which has made it obligatory on the court to furnish the accused with copies. See the Following case.

—the effect of the amendment is to annul the judge's discretion and make it obligatory on him to give the accused copies of the statements subject only to which the public interest requires does not impose on the Judge to statement recorded under s. 161 been opened. 54 C. 307: 1927 Ca

S. 162. Statements to police not to be signed or admitted in evidence—contd.

582, (42 I. A. 135 and 27 Cr. L. J. 100) *Ref.* 8 Pat. L. T. 613 : 1927 Pat. 325. 102 I. C. 773 : 28 Cr. L. J. 597, 106 I. C. 350 : 1928 Lah. 144.

—where a witness was tendered but not examined by the prosecution nor cross-examined by the accused, the latter is not entitled to a copy of the statement made by the witness to the police. 7 Pat. 153 : 1929 Pat. 34 30 Cr. L. J. 273, 114 I. C. 220 : 10 Pat. L. T. 297.

—the accused has the right to apply for copies as soon as a prosecution witness is called either in an inquiry or in a trial. 1929 Nag. 172 30 Cr. L. J. 728 : 117 I. C. 213 : 1929 Cr. C. 47, 1929 Nag. 240 : 1929 Cr. C. 264 119 I. C. 675, 1929 Rang. 87. 6 Rang. 672 30 Cr. L. J. 538 : 115 I. C. 899.

—the application to get a copy of the statement recorded under s 162 Cr. P. C. must be made at the time the prosecution witness whom it is desired to contradict appears in the witness box. 29 Bom. L. R. 1531 : 52 Bom. 195 107 I. C. 57 : 29 Cr. L. J. 221 : 1928 Bom. 23, 110 I. C. 459. 1928 Pat. 593. 29 Cr. L. J. 715, 56 C. 840 : 1929 Cal. 182 : 116 I. C. 167 : 49 C. L. J. 197 30 Cr. L. J. 580, 1929 M. W. N. 885, but so far as proceedings before charge are concerned copies should not be granted until the stage of cross-examination is reached. 1929 M. W. N. 885, but it has been held by the Lahore H. C. that as a matter of practice there is no harm if a copy is given at an earlier stage. 192 Lah. 429 : 30 Cr. L. J. 760, 117 I. C. 377.

—if the accused does not apply for copies of statements during the enquiry by the committing Magistrate he has no right to ask for the copy at the time of trial before the Judge. 56 C. 840 : 1929 Cal. 182 : 116 I. C. 167. 49 C. L. J. 197 : 30 Cr. L. J. 580.

—there is nothing in the sec. which requires that the cross examination should have been opened and that the accused should have laid in that the foundation for the granting of a copy. 9 Pat. L. T. 92 : 1928 Pat. 215 : 7 Pat. 205, 110 I. C. 459 : 1928 Pat. 593 : 29 Cr. L. J. 715

—the amendment does not intend that the Judge should consider whether a foundation has been laid by way of cross-examination before copies of statements can be granted. 54 C. 840 : 49 C. L. J. 197 : 30 Cr. L. J. 580 : 1929 Cal. 182 : 116 I. C. 167.

—the procedure which governs the grant of copies of statements of the
495 : 1927

—the statement of witness that the accused were mentioned by the prosecution witness to the police is entirely inadmissible in evidence under s. 162 cl. (1) as amended. 95 I. C. 273 : 1926 Pat. 211 : 27 Cr. L. J. 753 : 7 Pat. L. T. 673.

S. 162. Statements to police not to be algned or admittid in evidence—contd.

—before the statement is put to the prosecution witness under s. 145 Evi. Act, to contradict him it must be either proved by the Investigating Officer or must be admitted by the witness in his cross examination or must be proved in some other way. 29 Bom. L. R. 1581 : 52 B. 195 : 107 I. C. 57 : 29 Cr. L. J. 221 : 1928 Bom. 23.

—the statements to the police must be definitely put to the witness under s. 145 Evi. Act, in order to contradict him. 105 I. C. 807 : 28 Punj. L. R. 649 : 8 Lah. 605.

—when the police diary is used to contradict a witness the provisions of s. 145 Evi. Act and s. 162 Cr. P. C. must be borne in mind. 26 A. L. J. 139 : 29 Cr. L. J. 472 : 1928 All. 1280 : 109 I. C. 1201.

—the statement to the police can only be used by the accused for contradicting a prosecution witness in the manner provided by s. 145 Evi. Act. 83 Ind. C. 1007. 26 Bom. L. R. 965, 30 C. W. N. 503, 94 I. C. 271 : 1926 Lah. 365 : 27 Cr. L. J. 607 : 6 Rang. 137 : 110 I. C. 333.

—under the amended section statements made by any person to a police officer in the course of an investigation shall not be used for any purpose except to contradict a witness at the request of the accused in the manner provided in para 2 of the section. 30 C. W. N. 503 : 27 Cr. L. J. 641 : 1926 Cal. 793 : 94 I. C. 593, 1923 Lah. 380 : 107 I. C. 766 : 29 Cr. L. J. 282 : 8 Pat. 279 : 118 I. C. 130 : 1929 Pat. 268.

—although the statement may only be used to contradict a witness the court cannot, on that ground refuse to grant a copy because there is apparently no contradiction. 1929 Nag. 172 : 117 I. C. 213 : 30 Cr. L. J. 728 : 1929 Cr. C. 47.

—there is nothing in the sec. authorising the court to look into the statement in the police diaries for the purpose of finding out whether it is contradictory to the statement made in court before the granting of application. 10 Pat. L. T. 46 : 30 Cr. L. J. 858 : 1929 Pat. 268 : 118 I. C. 130 : 8 Pat. 279.

—to make the statements to the Police admissible the question is whether the inconsistency in the statements did not make the evidence in court unreliable. 104 I. O. 459 : 28 Cr. L. J. 843 : 7 Pat. 50 : 1928 Pat. 31 : 9 Pat. L. T. 57.

—to entitle an accused person under s. 162 Cr. P. C. to contradict the witness it is not necessary that the statement must contain the very words used by the witnesses and it is sufficient if it contains a memorandum of what the witness said. 104 I. O. 459 : 28 Cr. L. J. 843 : 7 Pat. 50 : 1928 Pat. 31 : 9 Pat. L. T. 57.

—under s. 162 at any stage of the proceeding and Magistrate's failure to comply with s. 162 by rejecting the application summarily vitiates the trial, 9 N. L. J. 167 : 29 I. C. 46 : 28 Cr. L. J. 14 : 1927 Nag. 24, but he is not entitled to copies before the cross-examination is opened at all. 1926 Mad. 183 : 27 Cr. L. J. 100 : 91 I. C. 532.

S. 162. Statements to police not to be signed or admitted in evidence—*contd.*

—a list of stolen property given to the police during investigation or the map prepared by the police containing information given to them during the investigation is not admissible in evidence. 85 I. C. 723 : 26 Cr. L. J. 579 : 1925 Cal. 959.

—the provisions of sec. 162 Cr. P. C. do not affect the Ss 21 and 27 Ev. Act, s. 162 refers only to statements made by witnesses and by the accused. 6 N. L. R. 180 : 12 Cr. L. J. 60.

—s. 162 declares that a police officer shall not record any statement made to him by a person under examination. 29 C. 483 : 6 C. W. N. 596, 7 C. L. J. 246

—no oral statements of witnesses should be recorded in the 'special' diary kept by the police officer under s. 172. Whether incorporated in the special diary or not, records of statements of witnesses taken by the police fall under s. 162 and are liable to be produced, but only under the conditions laid down under that sec. and the accused may be furnished with the copies thereof. 33 C. 1023 : 10 C. W. N. 890, 36 C. 560

—statement made to a Sub-Inspector of Police are inadmissible in evidence under s. 162 Cr. P. C. 40 C. L. J. 313 : 84 Ind. C. 451.

—evidence as to what the complainant stated to the investigating officer and her pointing out the places where she was taken is inadmissible in evidence. 42 C. L. J. 524 : 92 I. C. 439 : 27 Cr. L. J. 263 : 1426 Cal. 320.

—the first information report against the accused is not a statement made to the police because it is not made in the course of investigation. 1927 Cal. 17 : 54 C. 237 : 28

—if there is no substantial evidence and the complainant is not a witness, the delay in forwarding such report if adequately explained is immaterial. 105 I. C. 807 : 28 Punj. L. R. 649 : 8 Lah. 605 : 28 Cr. L. J. 983 : 1928 Lah. 17.

—information obtained by a police officer as a result of a statement made by an accused person cannot be proved. 81 Ind. C. 545 : 3 Bur. L. J. 245.

—on the face of the proviso it does not cover the case of a witness for the defence whose statement may have been recorded by the policeman, nor allows the prosecution to impeach the credit of such a witness by examining him upon any written statements he may have made to the police. It could never have been intended to allow the prosecution to impeach the credit of its own witness for its own purposes and against the wish of the accused by reference to police testimony. 32 B. 111 : 9 Bom. L. R. 789 F. B. but see C. W. N. 1918 Pat. p. 95, 34 B. 599 above

—the statements made by the accused to the police put to by the prosecution to prove the falsity of the defence showing that the defence subsequently set up was 41 C. 601.

S. 162. Statements to police not to be signed or admitted in evidence—*contd.*

—a conviction under s. 46 of the Bengal Excise Act cannot be supported by the statements of the accused obtained while in the custody of the excise authorities 53 C. 706; 30 C. W. N. 854; 1926 Cal 1163

—statements made by accused to a police officer do not come within s. 162 and are inadmissible under that section though they may be let in evidence as admissions under the Evi. Act 44 C. L. J. 253. 54 C. 237. 99 I. C. 227; 28 Cr. L. J. 99; 1927 Cal. 17

—in order to bind the witnesses they should not be placed before a Magistrate not competent to try the case, for examination under s. 164. 29 C. 483. 6 C. W. N. 596, 7 C. W. N. 220, 7 C. L. J. 246.

—the writing itself of dying statement, though recorded by the Magistrate, cannot be admitted to prove the statement made. 8 C. 211, 6 C. W. N. 72, 921

—s. 162 as amended does not prohibit the use as evidence, for any purpose, admissible under the Evidence Act, of oral statements made to the police during investigation. The application of the amended sec. is confined, as before, to the written record, but the new section gives the accused a right to have a copy of the written statement for the purpose of using it to contradict the witness for the prosecution 1925 M. W. N. 63; 86 I. C. 209; 26 Cr. L. J. 721; 1925 Mad. 579; 48 M. 640; 48 M. L. J. 195.

—the provisions of the sec. do not prevent the prosecution, after a witness has made a statement, asking him simply whether he made that statement to the police and the investigating police officer may also be asked whether the witness had made that statement to him. 4 Pat. 204; 1925 P. 450.

—where the M. called for the diary after receiving a written statement from the police but there was no statement recorded under s. 162, held that if the diary was of the kind described in s. 172 Cr. P. C. neither the accused nor his agent was entitled to call for them or to see them unless and until they were used by the police or the Court for the purposes described in the section. 84 I. C. 441; 26 Cr. L. J. 297; 1925 Pat. 339.

S. 163. (No inducement to be offered.)

—the term police should be read according to its more comprehensive and popular term. 26 C. 569; 3 C. W. N. 393, 22 B. 235 1 C. 207, see other cases under the heading 'confession.'

S. 164. (Power to record confessions and statements).

Amendments have been made on the following grounds and points as stated in the Report of the Joint Committee — "We think that *d not be recorded under the sec. by or by second class Magistrates unless consider that a statutory obligation acting under this sec. to warn an*

S. 164. *(Power to record confessions and statements)—contd.*
accused person about to make a confession that the same may be used against him, and we think that the certificate prescribed by sub-sec. (3) should record the fact that warning had been given."

—s. 164 in spite of the alteration it has undergone by the new amendment cannot apply to a confession recorded by a Presidency M. in the course of investigation held by the Calcutta Police. 29 C. W. N. 300: 52 C. 67: 86 I. C. 414: 1925 Cal. 587: 26 Cr. L. J. 782.

—where the Presidency Magistrate of Calcutta to whom the Calcutta Police took the accused being requested by the Police of Burdwan, who recording confession, did not comply with the provisions of this section, held that the accused's arrest and production before the Presidency magistrate must be considered as something done in the course of the investigation in Burdwan and not something apart from it and consequently the non-compliance by the Presidency Magistrate with the provisions of this section made the confession inadmissible. 39 C. W. N. 454. 94 I. C. 365: 1926 Cal. 743. 27 Cr. L. J. 621.

—since the amendment of this section the Presidency Magistrate in Calcutta can record a confession made in the course of police investigation there. 1926 Pat. 279: 96 I. C. 509. 27 Cr. L. J. 957.

—the principal requirement introduced by the Amending Act in s. 164 is that a M. before recording a confession should explain to the person making it, that he is not bound to make a confession and that if he does so it may be used in evidence against him. 26 Punj. L. R. 173: 7 Lah. L. J. 170: 1925 Lah. 367: 88 I. C. 854: 1925 Lah. 432, 88 I. C. 18: 1925 Lah. 315: 26 Cr. L. J. 1074.

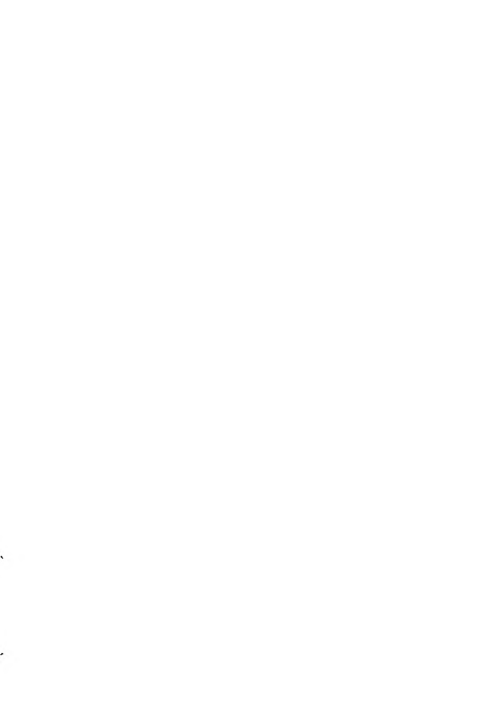
—the provisions of s. 164 Cr. P. C. are imperative and s. 533 did not render a confession admissible in evidence where no attempt had been made to conform to the provisions of the former section 35 A. 260, 9 M. 224: 2 Weir 125. 2 C. W. N. 702, 8 C. W. N. 22, 24, 21 B. 494, 17 C. 862, 23 B. 221, 7 C. W. N. 220.

—the provisions of s. 164 Cr. P. C. are mandatory, so where the Police used incomplete chelen to record confession made under promise of pardon it was not admissible. 110 I. C. 319. 1928 Lah. 724: 29 Punj. L. R. 358: 29 Cr. L. J. 697.

—the word record in s. 164 Cl. (3) means "making a part of judicial record" and not merely writing out. 3 Bom. L. R. 950.

—the examination of the accused person should be taken down in the language in which it is delivered, and as far as possible in the words used by him. 24 W. R. 54. Ratan. Cr. 633. 20 W. R. 50, it is doubtful whether the defect can be cured by s. 533, 15 C. 595. 17 C. 862. But see 22 C. 517, 18 C. 549, 2 M. 5, 23 B. 495, 9 C. L. J. 55 (68), 4 Bom. L. R. 785.

—the word statement in s. 164 means the witness and does not mean that of an accused person. 2 C. W.



S. 164. (Power to record confessions and statements)—*contd.*

—before recording the confession of an accused person the Magistrate should ascertain how long he has been in custody. If there is no record of that fact the Sessions Judge before admitting the confession should send for the Magistrate and satisfy himself on the point. 25 B. 543, 7 C. W. N. 345, 6 C. W. N. 380, 9 A. 528 p. 566, 18 Cr. L. J. 721, 13 C. W. N. 861, but the confession should not be ignored on the ground that the Magistrate did not ask the accused how long he was in police custody. 4 P. L. T. 186.

—in recording confession a Magistrate ought to be as much careful of the interests of the accused as of the prosecution. 1 C. 115.

—non-compliance with an order of Government as to the formalities to be observed in recording confessions does not render a confession inadmissible. 33 M. 413

—in taking down the evidence of an witness to a confession actual words used by the accused and not the impression of the witness should be looked to. P. R. 32 of 1885

—it is not necessary for the Magistrate to warn the accused that he is speaking to a Magistrate, if, from the circumstances of the case the accused must have known that he was speaking before one. 9 C. L. J. 55

—it is not necessary for a Magistrate to caution a prisoner before receiving his or her statement. 5 M. H. C. Sp. 11.

—it is not necessary for a Magistrate trying an accused person to record his confession, since he is competent on the admission of the prisoner to convict him without any further record. 3 C. 756

—in warning an accused before taking down his statement, a Magistrate should state how the accused was warned. 14 W. R. Cr. 81.

—under s. 164 Cr. P. C. a Magistrate is entitled to record any voluntary statement made by the accused, but he is not entitled to examine him in respect of the facts of the case. 5 C. W. N. 864.

—he is not an Investigating Officer, his position when recording such statement or confession is merely that of a Recording Magistrate. 88 I. C. 729; 1936 All. 22; 26 Cr. L. J. 1209; 23 A. L. J. 719.

—an honorary Magistrate being a member of an independent Bench cannot, unless specially authorised, act independently and record a confession under s. 164 Cr. P. C. 29 C. 483.

—a Magistrate exercising the Police powers and possessing the title of a Police officer, should be very careful to record fully the circumstances under which he records the confession. 7 Burma 100.

—it was highly irregular for the Magistrate to perjure the alleged statement made to and recorded by the accused before recording the confession. 13 C. W. N. 861; 9 C. L. J. 663.

S. 164. (Power to record confessions and statements)—*contd.*

—s. 164 Cr. P. C. requires that the confession must be recorded
2 L. B. R. 19 *contra*. 3 C. 736.

—where the M. recorded confession before he took cognizance of the case and before the examination of the prosecution witness began, the confessions were duly recorded under this sec. 37 C. 467.

—there is no distinction between a statement made by an accused person under a 164 and a confession made by him. The oral evidence of the M. regarding an unrecorded statement is inadmissible. 25 C. W. N. 788; 62 Ind. C. 578; 49 C. 267. 1922 Cal. 342, 54 I. C. 465; 21 Bom. L. R. 1065.

—oral evidence of M. to prove confession of an accused when he does not hold inquiry or trial but merely watches the progress of the investigation by police without keeping any written record is admissible. 45 M. 230. 42 M. L. J. 37. 69 I. C. 284; 23 Cr. L. J. 680, 1918 P. R. 11, 21 Bom. L. R. 1065, *contra* it has been held that a statement by accused in custody other than confession not recorded by M. as provided by this sec. cannot be proved by the evidence of the Magistrate. 49 C. 167; 1922 Cal. 342.

—if an accused person chooses to make a statement before trial there is nothing in the Code to prevent the M. from recording it. 4 Pat. L. T. 381; 72 Ind. C. 963.

—when confession is duly recorded under s. 164 circular instructions cannot stand in the way of its admissibility. 17 N. R. 113; 69 I. C. 257.

—no confidence should be placed on statements recorded when police-officers were not only present but were actually allowed to put questions. 56 I. C. 210; 21 Cr. L. J. 418.

—the fact that the M. took part in the Police investigation does not disqualify him from recording the confession. 12 I. C. 209, 5 S. L. R. 31.

—the court must in each case satisfy itself that the M. honestly believed and took steps to ascertain that the statement was voluntary. 4 P. L. T. 279, 73 I. C. 506; 1923 Lah. 345.

—where the M. giving the accused two days time for reflection recorded the confession to be voluntary and there were circumstances which corroborated the record the court can act on the confession though at the trial it was retracted. 4 Pat. L. T. 279; 72 Ind. C. 569; 1923 Pat. 356.

—the best way of testing a confession is to introduce incidental questions and to gather some test as to whether the statement may not be a taught statement repeated. 57 I. C. 462; 21 Cr. L. J. 638.

—it is the duty of the M. to question the person making the confession during police investigation to satisfy himself that he making it voluntarily. 76 I. C. 180; 1924 Lah. 634; 25 Cr. L. J. 1.

—where the M. did not enquire as to whether the statement was made voluntarily, it was inadmissible. 1924 Lah. 481; L. J. 979; 81 I. C. 627, 76 I. C. 180, 73 I. C. 260.

S. 164. (Power to record confessions and statements)—*contd.*

—omission to question the accused whether he made the confession voluntarily is fatal. 65 I. C. 613; 5 P. W. R. 1922 Cr.

—omission to ask the accused if he made the confession voluntarily as required by s. 164 (3), makes the confession inadmissible. 4 B. R. (1903) C. P. 13, 81 Ind. C. 627; 6 C. L. J. 166. The court must be satisfied that it is voluntary. 17 C. 862 p. 871, 5 A. 253, 25 B. 168 (173), 3 C. W. N. 163 (note), 4 P. L. T. 186.

—great care and circumspection are necessary in recording confession under s. 164, Cr. P. C. (1) It is necessary to record the questions put to the accused to ascertain whether the confession was voluntary; (2) to tell him that after his confession he will not have to go back to Police custody; (3) to warn him of the consequence which will ensue if he falsely implicates himself in the hope of release, (4) and to ask him whether the Police or any other person has subjected him to any ill-treatment. No hard and fast rule can or should be laid down as to the procedure of recording confession under this section. 1 O. L. J. 407; 25 Ind. C. 633.

—where the record does not show what the due warning was, the confession which was retracted could not stand. 59 I. C. 551, 2 Pat. L. T. 129; 22 Cr. L. J. 119. But the Magistrate's deposition may cure the defect. 2 Pat. L. T. 773 60 I. C. 56.

—although the record does not show that the accused was warned that he was not bound to make the confession and that the confession he would make might be used against him still if the M. deposes and proves that he gave such warning the confession will be admissible. 3 P. 872, 75 I. C. 762; 1923 Lah. 629.

—question of the M. whether the accused made the statement "out of his free will" was equivalent to asking him whether his statement was voluntary. 3 Pat. 872, 2 Pat. L. T. 773.

—a confession should not be ignored merely on the ground that the M. did not ask him how long he was in police custody. 72 I. C. 961; 24 Cr. L. J. 497; 4 Pat. L. T. 186.

—the M. should make a memorandum of what inquiry is made to see if the confession was voluntary, but the absence of such memorandum does not make the confession inadmissible. 67 I. C. 340; 23 Cr. L. J. 388.

—where the M. refuses to make the memorandum on the ground that in his opinion the confession has not been voluntarily made, such confession cannot form the part of any judicial record. 45 I. C. 267; 5 O. L. J. 70.

—the memorandum annexed to a record of a confession is no conclusive evidence of the fact that the confession was voluntarily made. 9 C. L. J. 663 (679).

—the Magistrate should examine the accused closely to ascertain his motive to make the confession. C. W. N. 1917 Pat. 149.

—but it is not absolutely necessary. 4 Pat. L. T. 186; 24 Cr. L. J. 497.

S.164. (Power to record confessions and statements)—contd.

—the defect in recording a confession may be remedied under s. 533 Cr. P. C., by examining the Magistrate who recorded the confession. 3 C. W. N. 387.

—what is admissible in evidence cannot become inadmissible through the course subsequently taken by a Magistrate. 3 C. W. N. 387.

—Magistrate's record should be presumed to be correct record. 73 Ind. C. 961 : 1923 Pat. 13 : 4 P. L. T. 186

—the record of the confession, as well as the memorandum must be signed by the Magistrate. 3 C. W. N. 387.

—absence of Magistrate's signature does not make the confession inadmissible. 15 W. R. 63, 8 W. R. 53, 3 C. W. N. 387, 3 Pat. 872.

—a Magistrate's certificate under s. 164 need not be in his hand-writing, his signature is sufficient 1900 A. W. N. 203, 3 Pat. 872.

—when certificate required by sub-sec (3) is duly appended to the record of the confession presumption is that precautions described in the sec were duly taken. 104 I. C. 247, 28 Cr. L. J. 807 : 1927 Lsh. 682, 1922 Lsh. 217 *Ref.*

—want of certificate in accordance with s. 164 Cl. (3) and failure to ask the accused whether his statement was voluntary may be cured by the deposition of the recording M. 3 Pat. 872, 75 I. C. 762, 113 I. C. 65 : 30 Cr. L. J. 49 : 11 Lsh. L. J. 5

—the provisions of s. 161 read with s. 364 are imperative as to the language in which a confession is to be recorded and s. 533 does not contemplate or provide for any non compliance with the law in this respect. 17 C. 862, (18 C. 549, 21 B. 495, 23 B. 221) *Diss.* 23 C. 817 *Dist.* 2 C. W. N. 702 *Fof.*

—where the confession made in Hindusthani was recorded in Bengali that being the Court Language, held, in the absence of evidence to the contrary it should be presumed that the proceedings were conducted in accordance with law. 18 C. 549, 21 B. 495 *Ref.*

—where the confession made in Bengali was recorded in English the M. who recorded it deposed that there was no objection and that he could not write Bengali complied with. 22 C. 817,

—record of the confession in English and in a narrative form does not render it inadmissible. 45 C. 166 : 71 I. C. 54.

—where the confession was made partly in English and partly in Bengali and the M. who was also a Bengali recorded it in English, it was sufficient compliance with the Code. 95 I. C. 509 : 5 Pat. 171 : 27 Cr. L. J. 957.

—where the confession is made in Marathi in answers to questions in Marathi, but the court records in English correctly and is read over to the accused who admits them to be correct, it is admissible in evidence. 4 Bom. L. R. 785.

S. 164. (Power to record confessions and statements)—*contd.*

—the prosecution must show that it was impracticable to take down answers in the language in which they were given. 17 C. 870, 15 C. 595, 18 C. 549, 21 B. 495 (501), 23 B. 221, A. W. N. (1892) 60.

—failure to record the statement in the language of the accused though practicable, does not make the statement inadmissible if the accused is not injured 21 B. 495, 45 A. 166, 4 Bom. L. R. 785

—mere informality in procedure does not render the confession recorded under s. 164 inadmissible. 68 I. C. 841. 1923 Lab. 189.

—a confession made by an accused in foreign language need not be recorded in that language. It should be recorded in the language in which it is interpreted to the court. 5 C. 826, 4 N. W. P. 16.

—where the confession was not taken in the form of question and answer nor in the language it was made nor was signed by the accused and certified by the Magistrate, it was inadmissible. 9 M. 224: 2 Weir 125, 2 C. W. N. 702 *fol.*, 21 B. 495 *Dist.*, 17 C. 862 *Ref.*

—where a Deputy Magistrate being directed under s. 159 C. P. C. to hold an inquiry, records statements made by the accused containing incriminating matter while in the custody of the Police and they are not recorded as voluntarily made, those statements are not admissible. 2 C. W. N. 702.

—s. 21 of the Evi. Act must be read with ss. 24, 25 and 26 of the same Act and ss. 164 and 364 Cr. P. C. 2 C. W. N. 702.

—an admission or confession before Magistrate holding inquiry under s. 202 is not statement recorded under s. 164 or s. 364 and is not admissible without further proof. 32 C. 1085.

—a statement made to the Police by a person who afterwards gives evidence in the case, is not admissible in evidence against the accused. It can be used as provided by the Evi. Act to contradict or to corroborate the witness. 1923 All. 469.

... proved to be voluntary is not of great value as a fact relevant to his guilt. 4 Pat. L. T. 381: 73 I.

—where in the course of an investigation of an offence, a witness makes a statement of a confessional nature which is recorded by the M. under s. 164 as statement and not as confession and subsequently in the course of the preliminary inquiry before committing M. the statement is retracted it is admissible in evidence against that witness in a prosecution for perjury on an alternative charge. 39 M. 377: 34 Ind. C. 307.

—a previous statement by a witness can be used for contradicting the witness and to show that he is unreliable. 100 I. C. 359 28 Cr. L. J. 279: 1927 Med. 1112.

S. 164. (Power to record confessions and statements)—contd.

—the entire confession should not be rejected because part of it has been found to be false. When one part is contradicted the whole testimony remains open to consideration. Even without such contradiction all parts of confession are not entitled to equal credit. If sufficient ground exists the part that charges the accused may be believed while that which is in favour may be rejected. 40 C. 873 : 22 Ind. C 169.

—where the M. refuses to grant copies of the statements recorded under s 164 Cr. P. C of such witnesses as were to appear at the trial, his order is wrong 1929 Lah 429 : 30 Cr. L. J. 760 : 117 I. C 377, 30 M. 466, 1925 Lah, 605, 1926 Lah. 122, Dist,

S 165 (Search by police officer)

To protect people from unnecessary trouble by general search provisions have been made to record in writing the reason for making a search and to send to the nearest M and to furnish the owner or occupier of the house with a copy of the record

—this section does not authorise general search by police of stolen property in the house of the absconding offender, it speaks of specific order unde
 979, 16 C. : A. L. J.
 901, 16 C. : C L. J,

—this section does not give any authority for the general search of the stolen property but only for specified stolen articles. A general search means a search not in respect of specified documents or things which the officer conducting the search considered necessary or desirable for the purpose of the investigation in hand but a roving inquiry for the purpose of discovering documents or things which might involve persons in criminal liability. 97 I. C. 955 : 1927 Cal. 93 : 27 Cr. L. J. 1195

—when a Police Officer searches a house for stolen articles of which a particular list is given him he makes a search for specific article and his action is not illegal. 1927 Cal. 93 : 97 I. C. 965 : 27 Cr. L. J. 1195.

—a police officer is entitled to search even for specific documents or articles in the house of a person accused of a crime. 97 I. C. 955 : 1927 Cal. 93 : 27 Cr. L. J. 1195, 38 C. 304 Diss. from.

—a police officer is entitled to make a search for not only what is stolen property but also for everything necessary for the purpose of investigating the offence 91 I. C. 43 : 27 Cr. L. J. 11 : 1926 All. 147 : 23 A. L. J. 1037.

—when a police officer makes search in a non-cognizable case without the order of the Magistrate he acts illegally and is liable to be sued for damages. 24 C. 691.

—when a Sub-Inspector assaulted while he made a search he was guilty under Ss. 332 and 333 I. P. C. 17 C. W. N. 1209,

S. 165. (Search by police officer)—contd.

—while a police officer holds an investigation to the house of one he cannot enter the house of his neighbour. 1928 All. 185 : 26 A. L. J. 410 : 107 I. C. 688 : 29 Cr. L. J. 272.

—where there was no search-warrant under section 98 Cr. P. Code the search was not a legal search and person who were part-owners and occupiers of the house had the right of private defence. 15 C. W. N. 343 : 38 C. 304.

—it is essential that a Police officer conducting a search under s 165 or 166 of the Code should send forthwith to the nearest M. copies of the record that he has prepared before undertaking the search and if this is not done, the occupiers of the house resisting the Police cannot be committed. 93 I. C. 1038 : 27 Cr. L. J. 542 : 1926 Cal. 663

—the M. is bound to supply the owner or occupier of the house searched, copies of record prepared during search by the Police under s 165 Cr. P. C. The H. C. can in revision interfere with the order of refusal by the M. to supply such copies. 1928 All. 402 : 26 A. L. J. 703 : 110 I. C. 215 : 29 Cr. L. J. 633.

—the provision of s 165 (4) are not imperative and it is not necessary that in every case that the witnesses should be residents of the locality. 1927 All. 516 : 28 Cr. L. J. 652 : 103 I. C. 108.

S. 167. (Procedure when investigation cannot be completed in 24 hours)

—s. 167 applies to investigations under Ch. XIV. and gives no authority to remand an accused in custody in proceeding under Ch VIII in order to enable the police to trace other persons to be proceeded against under that Chapter. 5 Bom L. R. 27.

—it is open to the M. to make report to police who can take action under s. 167 Cr. P. C. But the Magistrate has not the powers of a police officer to investigate and keep an accused person in custody for the purpose of such investigation; custody can only follow where definite charge has been made and complainant has been examined. 1930 All. 259 : 1930 Cr. C. 371.

—the detention of the accused in the police custody for the purpose of verification or identification is illegal. 7 C. W. N. 220, 457.

—the M. should not sanction detention without recording sufficient reasons as required by law. 7 C. W. N. 457, 11 C. W. N. 554, and the period cannot exceed 15 days on the whole 23 B. 32

—there should be at least something to satisfy the M. that the presence of the person arrested would assist in some discovery of evidence and his presence was indispensable for the purpose. 11 C. W. N. 554.

—by a mere perusal of the entries in police diaries the Magistrate may authorise detention from time to time not exceeding 15 days at a time. 13 C. W. N. 54, 11 M. 98, 23 B. 262.

—the section does not apply to cases under s. 112 Cr. P. C. 36 A. 262.

S. 167. (Procedura when investigation cannot be completed in 24 hours)—contd.

—where the accused is not brought before the court it is illegal to remand the prisoner merely on the application of the police. 36 P. R. 1867 (Cr.)

—the power of remand under this sec is given to detain prisoners in custody while the police makes the investigation and in a proper case, to commence the inquiry, but the period of detention is limited to 15 days in all. The custody mentioned in s. 344 is intended for under-trial prisoners. 38 C. L. J. 388 : 51 C. 402 : 81 Ind. C. 220.

—the intention of the Legislature, having regard to ss. 61 and 167, is that an accused should be brought before a M. competent to try or commit, with as little delay as possible. 51 C. 402 : 38 C. L. J. 388 : 81 Ind. C. 220, 6 M. 69, 2 Weir 413, 11 M. 98, 36 C. 166 : 13 C. W. N. 43, 11 N. L. R. 163. *Ref.*

—before a M. remands an accused person to police custody, the accused must be produced before him. 16 C. W. N. 145

—an application for remand by the police to a Magistrate falls under this section and can be held to be a proceeding instituted under the Code in that court. 50 B. 741 : 1926 Bom. 551 97 I. C. 801 : 28 Bom. L. R. 1043.

S. 168 (Report of investigation by subordinate police officer.)

—reports of the police officer in compliance with ss 167 and 161 are not public documents and the accused persons are not entitled to have copies of them before trial. 20 M. 189, F. B.

S. 170. (Case to be sent to Magistrate when evidence is sufficient)

—a bond under s. 170 can only be taken from a witness when the accused has been arrested and is either being forwarded to a Magistrate or is released on security being given for his appearance. L. B. R. 1893-1900, 478.

—when some of the accused are sent up and acquitted the D. M. can order those not sent up to be put on their trial. 7 C. W. N. 493.

—this sec. authorises the police officer, if there is evidence or reasonable ground for suspicion to forward the accused to a competent M. 51 C. 402 : 38 C. L. J. 388 : 81 I. C. 220.

S. 171. (Complainants and witnesses not to be subject to restraint.)

—where the police keeps a witness under surveillance before being examined by a M. the statements to Magistrate so obtained could hardly be regarded as voluntary. 4 C. W. N. 49, 129.

S. 172. (Diary of proceedings in investigation.)

—s. 172 is not exhaustive ; it includes a statement by a police officer that he examined certain witnesses and the statement of circumstances ascertained from the examination of witnesses

S. 172. (Diary of proceedings in investigation)—contd.

does not include the actual statements of the witnesses. 20 C. 642, 19 A. 390; 17 A. W. N. 174, F. B., 20 M. 189; 7 M. L. J. 167.

—this sec. does not deal with the recording of any statement made by witness. What the sec. intends to be recorded is what the police officer did, where he went, the people he visited and what he said. 31 C. W. N. 940; 45 C. L. J. 561; 1927 Cal. 644; 104 I. C. 245; 28 Cr. L. J. 805.

—the object of section 172 (2) is to enable the court to direct the police officer who is giving his evidence to refresh his memory from the notes made by him or to question him as to contradiction which may appear between statements so recorded and the evidence he is giving in court. The court may also use the diaries for the purpose of clearing up obscurities in the evidence as to bring out relevant facts in the interest of fair trial. 89 I. C. 252; 26 Cr. L. J. 1308; 1926 Lab. 54.

—police diaries cannot be placed before the jury. They are useful not as evidence but to aid court in the trial. 27 C. 295; 4 C. W. N. 129, 9 C. 455.

—the court is to discover out of the diaries any matter of importance bearing upon the case and then call for the necessary evidence to prove that matter. 1927 Cal. 644; 104 I. C. 245.

of the investigation. 16 C. W. N. 145.

—the power under this sec. to look into case diaries should be exercised sparingly. 1929 M. W. N. 587.

—Police reports and Police diaries written before the commencement of an investigation under Ch. XIV, do not come under this sec. 14 C. W. N. 1114.

—entries made in personal diary of a police officer who did not investigate into a case do not fall within s. 172. 85 I. C. 723; 26 Cr. L. J. 579; 1925 C. 959.

—if the special diary is used by the court for contradicting the police officer making it, it is not the right of the Police officer to refresh his memory. 174 F. B.

—the entries in the police diary cannot be used as evidence in the case to discredit the prosecution evidence. They can be used under s. 172 (2) only to help the court in the inquiry or trial utilizing the information given therein as a foundation for question to be put to the witness and in using the diary the court should always act very cautiously. 1927 Oudh 64; 99 I. C. 342; 28 Cr. L. J. 134. 19 A. 390, 16 A. 207 *Rel. on*

—it may be within the right of the police-officer not to refer to a diary, but the accused is entitled to the benefit of their refusal to refer to the diary and to disclose the source of their information. 86 I. C. 274; 6 Pet. L. T. 810; 26 Cr. L. J. 738; 1925 Pat. 131.

S. 172. (Diary of proceedings in investigation)—contd.

—a diary may be used to assist the court by suggesting means of further elucidating points which need clearing up and which are material for the purpose of doing justice between the Crown and the accused but not as containing entries which can by themselves be taken to be evidence of any date, fact or statement contained in the diary. *Nona* but the Police officer may be confronted with it. 21 C. W. N. 818; 44 C. 876; 22 M. L. T. 81; 15 A. L. J. 475 P. C., 2 Pat. L. T. 223.

—Where the Judge referred to the Police diaries after return of the verdict of the jury and convicted the accused according to the verdict there was nothing illegal. 32 C. W. N. 945; 56 C. 150; 1929 Cal. 57; 115 I. C. 258; 30 Cr. L. J. 435.

—statements of witnesses incorporated in the diary are not protected. 20 C. 642, 16 C. 610, 31 C. W. N. 940; 45 C. L. J. 561; 1927 Cal. 644; 104 I. C. 245; 28 Cr. L. J. 805.

—sec. 172 does not authorise a court to bring matters contained in Police diaries upon a judgment and to treat them as evidence. A. W. N. (1894), 155, 19 A. 390; 17 A. W. N. 174 *Ref*.

—disbelieving the story of the defence only because it is nowhere mentioned in the *Zinnia* amounts to making use of the *Zinnia* in such a way as to strengthen the case for the prosecution and to show that the rival story told by the defence is untrue, a course forbidden by the provisions of the Cr. P. C. 94 I. C. 140; 27 Cr. L. J. 572; 1926 Lah. 485.

—improper admission of diary is not sufficient ground for setting aside the decision of the Magistrate when he finds the accused guilty after considering the other evidence in the case. 15 Cr. L. J. 256; 23 Ind. C. 208.

—s. 172 (2) Cr. P. C. authorises a criminal court to send for the police diaries of a case under inquiry or trial in such court, and to use such diaries, not as evidence in the case, but to aid it in such inquiry or trial. 66 I. C. 187; 23 Cr. L. J. 251.

S. 173. (Report of Police officer.)

—the report referred to in sec. 190 (1) (b) is the report described in sec. 173, i.e., a report made by the Police after the case has been investigated and the facts ascertained and the conclusion arrived at, that there are sufficient grounds to justify the person reported against being forwarded to the Magistrate. 12 Cr. L. J. 92; 9 Ind. C. 492; 5 S. L. R. 1.

—abstract of the evidence need not be entered in the charge-sheet or report. 1929 M. W. N. 504.

—Police reports of police officers under Ss. 157 and 168 or 173 are not public documents within the meaning of sec. 74 Evi. Act and so the accused is not entitled to have copies of them before trial. 20 M. 189.

—the order of a magistrate striking off a case is not judicial order and the Sessions Judge cannot review the order under sec. 437, Rst. Un. Cr. C. 521.

S. 173. (Report of Police officer)—contd.

—when the nature of the information does not appear in the report of the Police officer and cognizance of the case is taken under sec. 190 Cl. (b), proceedings are to be set aside. 14 C. W. N. 304, 17 C. W. N. 1004 : 40 C. 852 : 19 Ind. C. 953, 37 C. 49.

—the use of the words "Police Report" in sec. 173 Cr. P. C. does not restrict s. 190 (1) (b) merely to non-cognizable offences. 28 C. W. N. 490 : 83 Ind. C. 628

—the words "Police Report" in s. 190 (b) do not mean a "Police Report" as laid down in s. 173. They include a "Police Report" of any description authorised by the Code. 83 Ind. C. 885 : 17 S. L. R. 150.

—there is no limit to the number of investigation which can be held into a crime and when one has been completed by the submission of a report under this sec. another may be begun or further information received. 35 M. L. J. 127.

—but when on the final report by the police stating that the evidence is insufficient the sub-divisional Magistrate declines to take cognizance of the offence, it is not open to the District M. to call for a charge sheet. 111 I. C. 862 : 1928 Pat. 585 : 7 Pat. 561. 10 Pat. L. T. 14.

S. 174. (Police to inquire and report on suicide).

—a *Post mortem* report is not admissible in evidence at the trial except for the purpose of refreshing the memory of the person making it or contradicting him. 6 C. W. N. 98, 9 C. 455, 27 C. 295 : 4 C. W. N. 129.

—considering the important nature of the evidence which is generally supplied by the results of the *post mortem* examinations, it is necessary that in such cases results of the observation, external and internal should be fully recorded. A *verbatim* report of the statements of witnesses examined at the inquest may be of great use to the court in testing the value of evidence subsequently given. 9 M. L. T. 321 : 12 Cr. L. J. 124.

—the accused is not entitled to copies of statements made at

statements
statements
the post

proceedings taken on complaint under s. 202 Cr. P. C. 99 I. C. 58 : 28 Cr. L. J. 26 : 1927 Lah. 30 : 8 Lah. L. J. 524 : 27 Punj. L. R. 779.

S. 175. (Power to summon persona.)

—a person answering falsely under this section commits an offence under sec. 193, I. P. C. 10 C. 405.

—obligation to answer truly all questions attaches only to the persons summoned by police officer. If a person voluntarily comes forward without any summons and makes false statement he cannot be punished for perjury. 23 Cr. L. J. 82 (Lah.)

S. 176. (Inquiry by magistrate into cause of death.)

—the inquiry of magistrate is not a judicial proceeding and the High Court cannot call for a report of the inquiry submitted to the district magistrate. 3 C. 742, *contra*, proceedings under s. 176 Cr. P. C. are judicial proceedings and are subject to the revisional powers of the H. C. under s. 435 and 439 Cr. P. C. and can also be scrutinised by the H. C. under s. 561A for the ends of justice. 1928 Bom. 390 : 30 Bom. L. R. 1050 : 112 I. C. 567 : 29 Cr. L. J. 1063.

—the Presidency M. is not ousted of his jurisdiction to hold preliminary inquiry into charge of murder, because the coroner has held an inquiry into the cause of death and has committed the accused to the H. C. under sec. 25 of the Coroner's Act (IV of 1871). 16 B. 159, 31 C. 1.

S. 177. (Ordinary place of inquiry and trial.)

—the word "ordinarily" in s. 177 Cr. P. C. means "except in the case provided hereinafter to the contrary." 30 Bom. L. R. 387 : 109 I. C. 357 : 29 Cr. L. J. 533 : 1928 Bom. 140.

—a committal by a magistrate authorised to commit but who has no territorial jurisdiction in the place where the offence is committed is valid unless failure of justice has been occasioned by such committal. 26 M. 640, *Contra*, 3 Pat. 417, 36 M. 387.

—commitment to a wrong sessions court which has no territorial jurisdiction is not to be set aside unless the error has caused failure of justice. 8 B. 312 : 2 Bom. L. R. 294, 18 A. 350.

—in the case of a session court, failure of justice shall not be presumed

—unless otherwise restricted by s. 12 (2) jurisdiction of the S. D. O. extends throughout the District. 29 C. 389 : 6 C. W. N. 552.

—The term "sessions court" in s. 213 Cr. P. C. means one having jurisdiction to try the case under s. 177. 10 M. L. T. 563 : 1912 M. W. N. 336 M. 385, 11 M. L. T. 21 : 1912 M. W. N. 455 : 22 M. L. J. 181.

—this section does not apply to an application for maintenance. 13 P. R. 1885 Cr., 9 P. R. 1883 Cr. the proper court is the court within the jurisdiction of which the accused resides. 24 C. 638 : 1 C. W. N. 577, 4 B. R. 1904 1st. Qr. Cr. P. C. 10, 7 C. P. L. R. Cr. 12, 9 B. 40, A. W. N. 1894, 16 B. 269 : 13 A. 343 *Dist*.

—the irregularity of an arrest does not vitiate subsequent trial. 34 Punj. Rec. Cr. 17. 26 M. 124.

—criminal breach of trust was held to be triable only where the offence was committed. 25 C. W. N. 850 : 82 Ind. C 131.

—an offence of bigamy and abetment thereof is only triable in a court which has territorial jurisdiction over the place where the offence was committed. 83 Ind. C. 577 : 3 Pat. 417 : 26 Cr. L. J. 49, 1924 Lah. 732 : 85 I. C. 365 : 26 Cr. L. J. 525, 30 Bom. L. R. 387 : 109 I. C. 357 : 29 Cr. L. J. 533 : 1928 Bom. 140.

S. 177. (Ordinary place of inquiry and trial)—contd.

—where the accused was charged with kidnapping done in Bombay and abetment of rape committed in Ahmedabad the Presidency M. or Bombay H. C. sitting as a Court of Sessions had no jurisdiction to try the abetment of rape. 1928 Bom. 475 : 30 Bom. L. R. 1253 : 113 I. C. 617 : 30 Cr. L. J. 191.

—a charge of misappropriation under s. 406 I. P. C. is triable only at the place where the money was misappropriated. 77 I. C. 425 : 25 Cr. L. J. 377.

S. 178. (Power to order cases to be tried in different Sessions Divisions).

—commitment by a magistrate to a wrong sessions court which has no territorial jurisdiction is not to be set aside unless the error has caused a failure of justice. 8 B. 312, 2 Bom. L. R. 294, 10 B. 274, 18 A. 350.

—under s. 177 Cr. P. C. every offence shall ordinarily be inquired into and tried by a court within the local limits of whose jurisdiction it was committed and ss. 178—189 do not take the case out of that sec. 9 A. L. J. 696 : 34 A. 451 : 13 Cr. L. J. 175.

—the H. C. has general power of superintendence over all courts which may be subject to its appellate jurisdiction including power to transfer any suit or appeal. 28 C. 708.

—the Local Government of Burma has no power to transfer a case committed to the court of the Recorder of Rangoon for trial to the court of the Commissioners. But it can transfer a case from the District of Rangoon to the Sessions Judge. 10 C. 643.

S. 179. (Accused triable in district where act is done or where consequence ensues).

“done” means some acts
consequences which has
or completing the act.
13 Cr. L. J. 856, 67 P. R.
1901, and loss to an employer resulting from criminal breach of trust
by a servant is not a consequence of that description 67 P. L. R.
1901, 19 A. 111, 18 P. W. R. 1908 Cr., 172 P. L. R. 1910 : 7 P. R.
1910 : 7 P. W. R. 1910 Cr.

—the consequence must be component part of the offence and must not be a consequence arising from it. 5 L. B. R. 57 : 2 Ind. C. 546, 35 A. 29.

—treatment of hurt inflicted in the hospital of another district does not render the offence triable in that district. 4 B. R. 1897-1901, vol. I, 53.

—this sec. applies only when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued. 4 M. L. T. 481, 8 Bom. L. R. 513.

—“consequence” means a consequence which forms a part and parcel of the offence; where the accused misappropriated money from the complainant's broach shop at Gauriganj, which money was

S. 179. (Accused triable in district where act is done or where consequence ensues)—*confd.*

to be sent to the principal shop of the complainant at Cawnpore, the Courts at Cawnpore had no jurisdiction. 10 A. L. J. 45 : 34 A. 487 : 13 Cr. L. J. 479, 10 A. L. J. 431 : 13 Cr. L. J. 479.

—an offence of Criminal misappropriation was committed in a Native State in consequence of which the complainant in British India suffered loss. The offence could be inquired into at either place. 96 I. C. 656 : 1926 All. 466 : 27 Cr. L. J. 992, 51 B. 101, *contra*. 1928 Sind 166, 46 B. 641.

—but a court in whose jurisdiction the accused has neither to submit account nor to pay the profits of the firm, cannot try the offence of misappropriation of the partnership funds. 97 I. C. 368 : 1927 All. 69 : 27 Cr. L. J. 1104.

—the word "consequence" bears its ordinary grammatical meaning, a consequence which is a
B. 641, 1929 Sind 30 : 30 Cr.

all the possible result of an act, but is restricted to results specified in the provision of the law making the act an offence. 81 Ind. C. 538 20 N. L. P. 72, 73 I. C. 323 24 Cr. L. J. 579 : 1923 Lah. 487.

—where the offence alleged is complete the provision, of sec. 179 Cr. P. C. do not apply in so far as the words "and of any consequence which has ensued," are concerned. 1929 Pat. 640 : 3 Cr. L. J. 765 : 10 Pat. L. T. 161 : 117 I. C. 309 : 1929 Cr. C. 369

—in a case of cheating, the Magistrate within whose jurisdiction the offence was committed has jurisdiction.
L. R.

—the value of the property stolen is payable parcel to a person at Hyderabad in pursuance of the latter's order for four boxes of tea and the consignee on opening the same found that they contained saw-dust and not tea, the offence of cheating was complete as soon as the consignee paid the money to the Post Office at Hyderabad and the Madras Court had no jurisdiction. 101 I. C. 484 : 28 Cr. L. J. 452 : 1927 Mad. 544 : 1927 M. W. N. 221 : 52 M. L. J. 511.

—in cases of cheating an intention to cause wrongful loss or wrongful gain is necessary but it is not necessary that loss should be caused. 1927 Pat. 640 : 3 Cr. L. J. 765 : 10 Pat. L. T. 161 : 117 I. C. 309 : 1929 Cr. C. 369

caused by the agent's acts at another place, courts of both places have jurisdiction. 19 A. 111 : A. W. N. 191, 32 A. 397 ;

S. 179. (Accused triable in district where act is done or where consequence ensues)—*contd.*

L. J. 319 : 11 Cr. L. J., 35 A. 22 : 10 A. L. J. 431, 26 M. L. J. 235, 7 P. R. 1910, 7 P. W. R. 1910 : 172 P. L. R. 1910, 3 Bom. L. T. 10, 67 P. L. R. 1901 18 P. W. R. 1908, Cr., 34 A. 487, 10 A. L. J. 45, 5 A. L. J. 333 : A. W. N. (1908) 115, 1928 Sind 166, 46B, 641

—the offence of criminal breach of trust is completed by the misappropriation or conversion of the property dishonestly, the wrongful gain or loss is only the consequence and is no essential part of the offence. 1914 M. W. N. 894, 16 M. L. T. 503 : 15 Cr. L. J. 688, 83 Ind. C. 696, 69 I. C. 631 : 23 Cr. L. J. 743, 2 Bur. L. J. 40, 74 L. C. 74.

—s. 179 does not apply to question of jurisdiction of courts to try offences of criminal breach of trust. 83 Ind. C. 696 : 6 L. L. J. 471, 41 C. L. J. 80.

—under s. 177 every offence shall ordinarily be enquired into and tried
was com
sec. 9 A

L. J. 235

—s. 179 applies only when a person is accused of the commission of any offence by reason of anything which has been done and of any consequence which has ensued. 4 M. L. T. 481 : 9 Cr. L. J. 92.

—illustration to s. 179 is not exhaustive and to hold that all the consequences prescribed by the Legislature in framing the section as conferring jurisdiction are *ejusdem generis* with the consequences specified in the illustration is not justified by the language of the sec., 18 P. W. R. 1908 Cr. : 8 Cr. L. J. 75, 30 B. 49, 30 M. 94, 25 M. 61 P. C.

—loss to one person though a normal result of an act of misappropriation by another is not an essential element of the offence of criminal misappropriation which is complete if the conversion is done with the intention of causing wrongful gain to the offender irrespective of any loss which may ensue to another, so the court at Nadia where the loss was caused to the complainant had no jurisdiction to try the accused an official of an insurance company in Madras where he received the money. 21 C. W. N. 573 : 44 C. 912, 34 A. 487, 1914 M. W. N. 894, 38 M. 639, 1 P. L. T. : 200.

—where the accused posted a letter at Calcutta to his agent at ... inciting to commit an offence, he was guilty of ... could be tried at Gorakhpur as soon as the letter agent. 16 A. 389.

179 Cr. P. C. is controlled in respect of certain offences P. C. and as pointed out in 44 C. 595 no question of expediency can be considered under s. 185 Cr. P. C., 621 : 75 I. C. 353 : 24 Cr. L. J. 929.

* 19. (Accused triable in district where act is done or where consequence ensues)—*contd.*

—when a defamatory letter was posted in Madras and addressed to Tinnevely the offence was triable in both the places. *M. L. T.* 164: 44 *M. L. J.* 648: 72 *I. C.* 69.

—in a case under s. 177 *I. P. C.* read with s. 40 Income Tax Act for making false verification in a petition at one place and presenting it in another place the offence was to be tried at the former place. 1923 *Mad.* 50.

S. 180. (Place of trial where act is offence by reason of retaliation to other offence).

—where theft is committed within British territory but stolen articles are retained outside British territory, the British Courts have no jurisdiction to try the accused for the retention of stolen property. 18 *C. W. N.* 1178: 15 *Cr. L. J.* 537: 24 *Ind. C.* 945.

—although the abetment of an offence might have taken place beyond the territorial jurisdiction of a Magistrate, yet under this section the abettor can be tried by a Magistrate within whose territorial jurisdiction the offence abetted was committed. 1 *Weir* 155.

—a girl was kidnapped by an accused in one district and she was confined by two other accused in another district, all were triable in the latter district. *A. W. N.* 1885, 164, 18 *A.* 350: *A. W. N.* 1896.

—where a foreign subject resident in a foreign territory instigated the commission of an offence in British territory, the instigator was not amenable to the jurisdiction of British court. 10 *Bom. H. C. R.* 356, 35 *Punj. Rec.* p. 1.

—the Chief Presidency Magistrate rightly refused to issue process on a person who carried on business in Bombay and through whose way in the course of his business

21 *Ind. C.* 171.

to s. 183, 26 *M. L. J.*

143, *Diss.* 19 *A.* 111.

235.

35 *A.* 29 *Ref.*

S. 181. (Being a thug or belonging to a gang of dacoits, escape from custody &c.)

—unless there is in fact a failure of justice, only want of jurisdiction does not render the conviction bad. 19 *Cr. L. J.* 896, 81 *Ind. C.* 40: 46 *A.* 138, 30 *M.* 94: 1 *M. L. T.* 345, 2 *P. L. R.* 1902: 2 *P. R.* 1902, 22 *P. W. R.* 1903 *Dist.*

—where robbery is committed outside but stolen property is brought into British territory the accused may be tried in British territory. 28 *A.* 372: *A. W. N.* 1906 (1) 52, 3 *A. L. J.* 146: 3 *Cr. L. J.* 247, 23 *A.* 266, *Dist.* 10 *B.* 186 *Fol.* 26 *M. L. J.* 235: 15 *Cr. L. J.* 207 *Ref.*

—Ss. 177, 179, 180, 181 and 183 must be read together with s. 531. Where an offence is committed within the jurisdiction of a sub-divisional Magistrate in one district, but is tried by a

S. 181. (Being a thug or belonging to a gang or dacoit escape from custody &c.)—contd.

in another district. the irregularity of the trial is cured by the Code. 30 M. 94 : 1 M. L. T. 345. 18 P. W. R. 1908 Cr

—a person who was resident of a Native State was a person for being one of a gang of dacoits and was committed for trial at a sessions court in British territory, the commitment proper and legal. 4 P. W. R. 1911 : 1 P. R. 1911 Cr. 84 P. L. 1911, 17 P. R. 1906 Cr., 6 B 622, 6 P. R. 1897 Cr. *Contra* see below

—s. 181 (2) applies only as between courts of different local area whose jurisdiction have been limited under s. 12 and to which the Code applies. The Magistrate cannot take cognizance of an offence committed in Native State except on a certificate of the Political Agent under s. 188. 5 S. L. R. 266 : 15 Ind. C. 802 20 M. L. J. 235 : 22 Ind. C. 991.

—s. 181 (3) as amended means that the offence of being in possession of stolen property may be inquired into either in the district where it was stolen or where it was found to be dishonestly possessed. "Such offence" in the section should mean the offence of theft where as grammatically they should mean any offence of possession. 91 I. C. 53 : 1926 All. 167. 27 Cr. L. J. 21 24 A. L. J. 148.

—the words "was conveyed" in s. 181 (4) do not import any separate or distinct offence where the offence of kidnapping is complete previous to such conveying. 121 P. L. R. 190 : 1 P. R. 1900 Cr., 30 P. R. 1889, 18 P. W. R. 1908 Cr., 21 A. L. J. 912.

—kidnapping is not a continuing offence, but is completed as soon as the minor is taken away from the custody of the lawful guardian. 18 A. 350, 19 A. 109, 26 A. 197, 1883 A. W. N. 67. 164, 2 C. W. N. 81, 4 C. W. N. 645, 81 Ind. C. 40 : 46 A. 138, 21 A. L. J. 912.

—when the offence of kidnapping is committed in a Native State beyond British India the accused cannot be tried in British India simply because the person kidnapped was conveyed or concealed or detained in British India. 20 C. W. N. 62, 17 Cr. L. J. 128.

—in case of criminal misappropriation the court within whose jurisdiction the balance is payable has jurisdiction to try the suit. 37 Punj. Rec. p. 4, 9 P. L. R. 1202 : 2 P. R. 1902 Cr.

—where a firm in Madras town authorised an agent in the muffsail station to sell kerosine oil and remit the proceeds at Madras and the agent misappropriated the proceeds of the sale, the loss occurring to the firm primarily in the muffsail, the Magistrate at that place and not of Madras had the jurisdiction to try the case. 39 M. 576, *contra*. As s. 181 cl. 2 does not in any way modify the provisions of s. 179 an offence of criminal misappropriation may be inquired into either where the offence was committed or where the consequence ensued. 96 I. C. 656 : 1926 All. 466 : 27 Cr. L. 992, 6 Rang. 380 : 1928 Rang. 217 : 111 I. C. 860.

—the offence under s. 409 I. P. C. (criminal breach of trust) can under this sec. be tried by a Magistrate within whose jurisdiction

S. 181. (Being a thug or belonging to a gang of dacoits, escapes from custody &c.)—*contd.*

tion the property is embezzled. 4 M. L. T. 481 : 9 Cr. L. J. 92, 71 I. C. 241 : 24 Cr. L. J. 113.

—the offences of criminal misappropriation should be tried where it is committed. 1925 Cal. 107

—jurisdiction of the court to try an offence of criminal breach of trust is governed by s. 181 sub-sec (2) and not by s. 179. Criminal breach of trust is not an offence which counts as one of its factors the loss that is the consequence of the act. It is the act itself which amounts to offence. 41 C. L. J. 80 : 29 C. W. N. 432 : 86 I. C. 213 : 26 Cr. L. J. 725 : 1925 Cal. 613, 44 C. 912 *fol.* and 20 N. L. R. 72 : 81 I. C. 53, 38 M. 630 *fol.* 46 B. 641 *Diss.*, 77 I. C. 490 : 25 Cr. L. J. 410 : 1924 663, 6 Lah. L. J. 471, *contra.* 26 C. W. N. 175 1922 Cal. 46, 26 J. *fol.* 44 C. 912 *Dist.*

—in case of criminal breach of trust the Cr. P. Code gives jurisdiction not only to the Court where the offence was committed but also to the court within whose jurisdiction the property was received or retained by the accused. S. 181 (2) does not require that at the time the property is said to be received or retained by the accused person he must have a dishonest intention. 51 B. 101 : 99 I. C. 76 : 1927 Bom. 33 : 28 Bom. L. R. 1292 : 28 Cr. L. J. 44.

—where the accused is under liability to render accounts at a particular place and commits an offence of criminal breach of trust for failure to furnish account, the court, within the local limits of whose jurisdiction that place is situated, may enquire into and try that offence under s. 181 (2). 96 I. C. 212 : 27 Cr. L. J. 900 : 1926 Lah. 119, 1925 Cal. 613, *fol.*

—where a person is tried in a wrong court contrary to the provisions of sec. 181 (4) but there is no failure of justice s. 537 cures the defect. 21 A. L. J. 912.

S. 182. (Place of enquiry or trial when scene of offence is uncertain &c.)

—this section relates to offences punishable by law and does not apply to a case under s. 145 Cr. P. C. which is not an offence. 3 C. W. N. 148.

—possession of an article bearing a counterfeit trade mark with the intention of sale, irrespective of the locality of the intended sale is sufficient to give jurisdiction. S. 182 Cr. P. C. goes to show that the policy of the law is to authorise more courts than one to try an offence of this kind. 25 C. 639 : 2 C. W. N. 450.

—kidnapping being complete as soon as the kidnapped is taken out of the lawful guardian's custody, no abetment of it is possible under the law after the kidnapped has once been so removed and it is not a continuing offence under this sec. 8 P. R. 189 Cr., 6 P. R. 1894 Cr., 7 P. R. 1894 Cr. *fol.* 56 P. L. R. 19 : 12 Cr. L. J. 94 *Ref.*, 2 C. W. N. 81, 4 C. W. N. 645, 1893 A. W. N. 67, 18 A. 350, 19 109, 27 A. 192.

—the offence of adultery is not a continuing offence 30 L. R. 1435 : 1928 Bom. 530 : 53 Bom. 69 : 30 Cr. L. J. 54 : 113 I. C.

S. 182. (Place of enquiry or trial when scene of offence is uncertain &c.)—contd.

—the expression "local area" in this section includes Sessions Divisions, District or Sub-division and is not restricted to the scene of alleged occurrence. 25 C. 858 : 2 C. W. N. 577. 28 B. 129. 34 M. 29. 20 M. L. J. 500. 8 M. L. T. 22 : 1910 M. W. N. 163. 13 C. L. J. 625. 96 P. L. R. 1901, the term applies to "local area" over which the Cr. P. C. applies and not to a "local area" in a foreign country or in other portion of British Empire to which the Code has no application. 16 C. 667.

—each portion of this section refers to the conflict between areas and the sec. really provides for the difficulty to prevent an accused person getting off entirely. 16 C. 667 p. 676. 2 C. W. N. 450. 23 C. 55.

—if a defamatory letter is posted in Madras with a view to its being used in Tinnevelly, the offence of defamation is triable either in Madras or in Tinnevelly under s. 179 or 182. 44 M. L. J. 648. 24 Cr. L. J. 309.

—where the precise scene of occurrence was uncertain and the subdivisional M. decided that the trial should go on at one place but the Dt. M. on revision quashed proceeding without issuing notice to the parties, the order of the Dt. M. was illegal. 49 C. L. J. 62 : 1929 Cal. 204. 30 Cr. L. J. 401 : 115 I. C. 95.

S. 183. (Offence committed on a journey).

—in order to give jurisdiction to the Magistrate under this sec the journey must be continuous one from one terminus to the other without any interruption by other party. 21 W. R. Cr. 68 : 13 B. L. R. Ap. 4. 1 M. H. C. R. 193.

—a journey is not broken by halt. 15 W. R. Cr. 45.

—the 'journey' referred to in the first part of the sec is the journey which the offender is in the course of performing ; and the words "that journey" at the end of this section refer to the same journey. 1 C. L. J. 334.

—the only court that would have jurisdiction to try the offence committed in the course of a journey would be the courts through or into the local limits of whose jurisdiction the offender in the course of the journey passed. 1 C. L. J. 334.

—the words "journey or voyage" spoken of in the section do not include a voyage on the high seas or foreign territory, but are confined to a journey or voyage within the territories in British India. 5 M. 23.

∴ —this sec. applies only if the place of offence is in British India. It would not give jurisdiction to a court in British India merely because the offence was committed in the course of journey. 55 M. L. J. 499 : 1928 Mad. 1136 : 1928 M. W. N. 791.

—the sec. applies only when the offence is committed in British India, where it was doubtful as to whether the offence was in British India or outside, the benefit of doubt must be given to the accused. 73 I. O. 323 : 24 Cr. L. J. 579 : 1923 Lah. 487.

S. 188. Liability of British subject for offences committed out of British India).

—the certificate of the Political Agent as provided by this

26 M. L. J. 235; 22 Ind. C. 991; 5 C. L. J. 207 *Dis.*

—a commitment made without such certificate is *ultra vires*, 2 Weir 148.

—absence of Political Agent's certificate renders the proceeding void. 92 I. C. 170; 27 Cr. L. J. 218; 1925 Lah. 185, 1926 Lah. 582; 7 Lah. 396; 97 I. C. 752, 31 Cr. L. J. 364; 122 I. C. 155.

—if there is no Political Agent no certificate is necessary. 13 B. 147, 24 B. 287; 1 Bom. L. R. 678 *Ref.*, 14 B. 227. Rat. Un. Cr. 773; Cr. Rul. 37 of 1895.

—certificate received after the commencement of the proceedings does not rectify it. 24 A. 256; 22 A. W. N. 45, 6 S. L. R. 260; 19 Ind. C. 954; 14 Cr. L. J. 298, 5 *Ind. C. 954* before the commitment or inquiry.

Cr. P. C. 8 Bom. L. R. 507, 2 P. R. Ind. C. 934; 11 Cr. L. J. 543, 81 I. C. 1000

—where the Political Agent certified that in his opinion the charge ought to be inquired into in British India prior to the commencement of the committal proceedings the commitment was perfectly valid. 1926 Lah. 609. 27 Cr. L. J. 942; 96 I. C. 398; 27 Punj. L. R. 708.

—the proceedings may be continued in the event of such sanction being subsequently obtained. 81 Ind. C. 108; 25 Cr. L. J. 620.

—on the strength of certificate signed by the Under Secretary to the Political Agent it is not reasonable to assume that

ought to be L. R. 708; it give any or in any of proving this is the production of a document signed by the Political Agent. *Above case.*

—the place of offence ceasing to be British territory after the commission of the offence, does not oust the jurisdiction of British Court. 34 A. 451.

—it was not open to the Political Agent to re-call the certificate issued by him under this sec. 11 Bom. L. R. 377; 1 Bom. Cr. C. 140.

—no sanction of the Local Government under s. 188 is necessary for the trial of Native Indian subject in respect of an offence committed by him on the high seas. 5 L. B. R. 221; 10 Ind. C. 705 F. B.

S. 188. (Liability of British subject for offences committed out of British India)—*contd.*

—the principle upon which the English cases are based underlies also s. 188 Cr. P. C. 13 Bom. L. R. 296 : 35 B. 225, 39 C. 164 : 15 C. W. N. 1053 : 14 Cr. L. J. 375.

—the term "Native Indian subject of Her Majesty" in s. 188 must be construed strictly and cannot be held to include "servants of Her Majesty." 16 B. 178, 2 S. L. R. 260 : 14 Cr. L. J. 298 19 Ind. C. 954

—the Magistrate is not restricted to the section mentioned in the certificate, as a certificate granted in respect of a certain set of facts covers every change disclosed by those facts 8 A. L. J. 525 : 10 Ind. C. 959. 12 Cr. L. J. 359.

—the proviso to s. 188 is universal in its application and is not restricted to Native States in India. 6 S. L. R. 260 : 19 Ind. C. 954 : 14 Cr. L. J. 298.

—where the defect due to the want of the Political Agent's certificate was not pointed out at the trial it was cured by s. 537 Cr. P. C. as no prejudice to the accused was either alleged or proved. 4 P. R. 1902 : 21 P. L. R. 1902 F. B., 35 P. R. 1888, Cr., 30 P. R. 1889 Cr. Ref. 11 P. R. 1899 Cr., A. W. N. (1884) 15, 19 A., 109, 13 M. 423, 16 C. 667, 5 C. W. N. 866 *Dis.*

—an accused charged in British India of an offence under the I. P. C. cannot plead that he was brought illegally from foreign country. 13 Bom. L. J. 296.

—when a foreigner starts the train of his offence in foreign territory and completes it in British territory he is triable by the British Courts, 36 B. 524

—when a British Indian subject was found in a Native State in possession of stolen articles, he could not be tried in British India for an offence under s. 412 I. P. C., but the certificate of the Political Agent would be necessary. 21 M. L. J. 441.

—where a bullock was stolen in British India and it was sold by the accused in a village in the Native State, the offence under s. 411 I. P. C. having been committed beyond the limits of British India the M. could not try the case without a certificate from the Political Agent and even the framing of an alternative charge under s. 379 I. P. C. would not confer jurisdiction. 32 Bom. L. R.

S. 190. (Cognizance of offences by Magistrate.)

Amendments.

The words in cl. (b) which run as "upon a report in writing of such facts made by any police officer," have been substituted for "upon a police report of such facts," making the decisions reported in 26 B. 150, 23 C. W. N. 451, 26 C. W. N. 131, 46 C. 807, 32 M. 3, 1 P. L. T. 73, 1 L. B. R. 13 in which the 'police report' was held to be a report in a cognizable case and the decisions reported in 51 C. 26 B. 150, 5 S. L. R. 1 : 12 Cr. L. J. 92, 6 S. L. R. 82 13 Cr. 262 in which a "police report" was held to be a report in investigation, obsolete.

S. 190. What is taking cognizance.

—taking cognizance of a case does not involve any formal action, or action of any kind, but occurs as soon as a M., as such, applies his mind to the suspected commission of an offence. 37 C. 412, 83 Ind. C. 485 : 17 S. L. R. 150.

—under s. 190 a Magistrate takes cognizance of an offence and not of the offender. 83 I. C. 885 : 17 S. L. R. 150.

—as the word has not been defined in the Code it is difficult to ascertain at what precise stage of the case cognizance is said to be taken. When a M. in charge on receipt of a police report makes over the case to another M. for inquiry, and the latter after taking evidence summons the accused, it is latter M. and not the former who is said to have taken cognizance of the offence. 17 C. W. N. 795.

—a M. cannot be said to have taken cognizance of a case under s. 107 until he issues notice to the person charged to show cause. 41 M. 246.

—a M. is not debarred from taking cognizance of an offence because another M. has already taken cognizance of the same. 50 C. 482.

—provisions of this sec. do not apply to proceedings taken by a Magistrate under s. 110 Cr. P. C. upon information received from any person other than the Police officer. 1927 Sind 77 : 27 Cr. L. J. 1280 : 93 I. C. 128 : 20 S. L. R. 291, 27 A. 172 *fol*

When the Magistrate can take cognizance

—the three alternatives upon which a M. may take proceedings are mutually exclusive. The M. need not take cognizance of an offence under some one of the alternatives to the exclusion of the other. 1929 Pat. 473 : 10 Pat. L. T. 779 : 119 I. C. 413 : 1929 Cr. C. 341 : 30 Cr. L. J. 1056, F. B.

—no court should accept a complaint which charges two people in the alternative and it is also wrong that an order sanctioning such a prosecution in the alternative should. 1930 Rang. 51 : 1930 Cr. C. 243.

Cognizance of offence upon receiving complaint, cl. (a)

As to "complaint" see definition of "complaint" in s. 4(h).

—when a complaint is made the M. is bound to examine the complainant and then he is to proceed under ss. 202 or 203. 13 C. 334, 29 C. 410, 11 M. 443, 12 B. 161.

—ss. 200 and 203 which impose upon the M. the duty of examining the complainant on oath are applicable only where the M. purposes to take proceedings upon the information supplied by the complainant but in every case where a document in writing is lodged it is not the duty of the M. to treat that as a complaint and proceed upon that and not upon any other source of information. 1929 Pat. 473 : 10 Pat. L. T. 779 : 119 I. C. 413 : 1929 Cr. C. 341 : 30 L. L. J. 1056, F. B.

S. 190. Cognizance of offence upon recording complaint, cl. (a)—*contd.*

—the M. cannot avoid the making of an inquiry and examining the complainant merely by accepting the conclusion of the Police. 14 C 707.

—the omission to examine a complainant under s. 200 is a mere irregularity and not an illegality. 19 L. W. 461; 81 I. C. 218; 1924 Mad. 587.

—refusal to summon the accused without examining the complainant and his witness in a serious case is illegal. 29 C. L. J. 50.

—when the written complaint did not contain a particular charge which was subsequently added by the M. on examining the complainant, it was not a legal complaint. 10 A. 39.

—the expression "information received from any person other than a police officer" in s. 190, 1 (c) clearly means only such information as does not constitute a complaint nor a police report. 14 Bur. L. R. 250; 4 L. B. R. 30.

—but where the police investigated a non-cognizable case without the sanction of the M. under s. 155 (2) Cr. P. C. and the accused were charged for one cognizable offence and two non-cognizable offences, and the M. discharged the accused regarding the cognizable offence, the charge-sheet sent by the Sub-Inspector could be treated as a complaint under s. 190 (a). 29 Bom. L. R. 742; 51 B. 498; 1927 Bom. 440; 28 Cr. L. J. 939; 105 I. C. 459.

—a police officer is not prohibited under this Act from presenting a complaint to the Magistrate in a non-cognizable case, 82 I. C. 753; 1925 Lah. 237; 25 Cr. L. J. 1361; 6 Lah. L. J. 606.

if the Magistrate had declined to take cognizance of the offence, he deemed to have taken cognizance of the offence by him. Ordinarily the Magistrate is to take cognizance of the offence under Cl. (a). 14 Bur. L. R. 250; 4 L. B. R. 30.

—proceedings taken against the remaining accused without any one formally taking cognizance of the case were held to be irregularly instituted and were set aside. 3 C. L. J. 433; 15 Ind. C. 65.

—where the complaint was lodged against some but the M. after examining the complainant and some witnesses issued processes against them as well as against some other, he took cognizance under cl. (a) and not (c) and s. 191 does not apply. 3 C. W. N. 491; 26 C. 786, 18 C. W. N. 921; 15 Cr. L. J. 546.

—s. 351 Cr. P. C. is independent of s. 190 and is not limited by the latter sec. but the M. initiating proceedings in regard to additional accused must be held to have acted under the same clause of s. 190. 73 I. C. 1; 25 C. 785, 3 C. W. N. 367, 41 C.

—if the M. is satisfied that to the D. M. that an accused before him had committed perjury and altered a document filed in court, he can take cognizance of the case under s. 190 (a).

S. 190. Cognizance of offence upon recording complaint.
cl. (a)—contd.

transfer it for trial under s. 192 (1) to another M. 21 A. L. J. 825 : L. R. 4 A. 248.

—s. 6 of Act II of 1907 (E. B. and Assam) creates an offence under a local law and proceedings relating to such offence should be taken under this sec. Where a magistrate authorised the Police Inspector to enter and inspect the house and the latter asked the Sub-Inspector to do the same, the M. had no jurisdiction to take cognizance of the case on the report of the Sub-Inspector. 16 C. W. N. 1049; 16 Ind. C. 499; 13 Cr. L. J. 691.

—where police reported an information to be false and the informant applied to the Magistrate to have the case investigated and witness summoned, the application was a complaint. 14 C. 707 F. B. 5 C. W. N. 254.

—a complaint may be dismissed for non-payment of process-fee. Rat. Un. Cr. C 491; Cr. Rul. 60 of 1889.

—the taking of the complaint and issuing summons are not ministerial acts. Rat. Un. Cr. 8.

—dismissal of complaint without examining the complainant and sanctioning his prosecution is bad. 4 O. C. 127, 27 C. 921 *Fol.*

—but a complaint made in the form of a police report or charge-sheet may be dismissed without examining the witness. 2 Weir 246.

—the Magistrate cannot consider the punishment of some as sufficient and refuse to summon the rest, 4 C. W. N. 560, 5 C. W. N. 488.

—where the trying Magistrate found that the accused was not guilty but some other person was, he was competent to try the latter as he took cognizance under cl. (a) and not cl. (c). 32 P. R. 1904 Cr.; 1 Cr. L. J. 511; 68 P. L. R. 1004, 4 C. W. N. 367, 26 C. 786. *Fbl.* 14 Cr. L. J. 290; 9 N. L. R. 65; 19 Ind. C. 946. *Ref.*

—a Magistrate cannot dispose of a complaint without examining the complainant on oath and the defect cannot be cured by the subsequent examination. 23 Cr. L. J. 413, but see 20 Cr. L. J. 675, 795.

—a Magistrate must proceed under one of the three modes: he cannot proceed only upon an oral complaint. 2 Weir 24, 15 C. L. J. 517; 16 C. W. N. 1105 *Ref.*

—when there is no complaint the Magistrate may refuse to initiate proceeding on police report. 1 A. L. J. 609.

—it is not necessary that a complaint or a police report should expressly charge an accused person, to give jurisdiction to deal with him under cl. (a) or cl. (b), U. B. R. 1905, 4th gr. Cr. P. C. 41, U. B. R. 1897; 1901, vol. I. 56, 21 U. B. R. 1904-1905 Cr. P. C. *Ref.*

—report of offence by trying Magistrate is a complaint and the D. M. has jurisdiction to transfer case for trial to subordinate court. 81 Ind. C 595.

—under s. 190 (a) a M. takes cognizance of a case before he examines the complainant under s. 200. 81 Ind. C. 218.

S. 190. Cognizance of offence upon Police report, cl. (b).

—a complaint in a non-cognizable case by a police officer is not a police report within cl. (b) but is a complaint within cl. (a). 26 B 151.

—the "police report" is a report made by a police officer in a case which he may investigate under Ch. XIV. Written information given by a police officer is not a police report within this sec. 1 L. B. R. 59, *overruled* by 2 L. B. R. 146.

—a police *challan* is a police report. 35 Punj Rec. 48: 36 Punj Rec 27.

—the report of an Excise Sub-Inspector is a police report for the purpose of this section. 54 C. 371: 100 I. C. 540: 1927 Cal. 405: 28 Cr. L. J. 316.

—where a sub-divisional Magistrate empowered to hear appeal from his subordinate Magistrate, instead of making an order of retrial, tries the case himself he takes cognizance of the case not under cl. (a) but under cl. (b) as he has before him the police charge-sheet stating all the facts. 30 M. 228: 16 M. L. J. 546: 2 M. L. T. 46.

—cognizance of case not upon first information but upon a subsequent police report comes under cl. (b) and not (a), 8 C. W. N. 864.

—where a Magistrate sent the case to the police for inquiry and took cognizance of the case upon receipt of the report, it must be presumed that the action was based on the police report. 11 A. L. J. 331: 14 Cr. L. J. 218, 12 Ind. C. 314.

—where a Sub-divisional Magistrate listened to information given by the police and ordered them to *challan* the accused under s. 143. I. P. C., the magistrate really proceeded under cl. (b) and not cl. (a). 3 P. R. 1910 Cr.: 35 P. W. R. 1909 Cr.: 164 P. L. R. 1910, 24 M. 317 (note) *Ref.*

—the police report should set forth the nature of the information against the accused; where it did not set forth the nature of the information the prosecution instituted on the police report was set aside. 37 C. 49: 14 C. W. N. 304.

—where a Magistrate takes cognizance of an offence under s. 190 (c) he is bound to take further proceeding under s. 191. C. W. N. 202.

—a Magistrate is entitled to refuse to initiate proceedings on the report of the police where there is no complaint. 1 A. L. J. 609.

—the expression "Police Report" in cl. (b), before its amendment, meant a police report within the meaning of sec. 170 Cr. P. C., but under s. 190 (b), as amended by Act XVIII of 1923, a M. can take cognizance of an offence upon a report made by any police officer, but the report must state facts constituting the offence. A mere assertion that an offence has been committed is not sufficient. 51 C. 402: 38 C. L. J. 388: 81 Ind. C. 220.

—the Magistrate can take cognizance of even non-cognizable offences upon a report in writing made by a police officer. Now it is

S. 190. Cognizance of offence upon Police report, cl. (b)—contd

not necessary even to examine him on oath. 49 M. 525; 1927 M. W. N. 43; 1926 Mad. 865; 27 Cr. L. J. 1031, 96 I. C. 983 F. B., 1925 M. L. W. 317 overruled, 1928 All. 765; 111 I. C. 858; 51 A. 338; 27 A. L. J. 68.

—the word "report" in the amended clause should be interpreted as meaning not only police report but also a report in a non-cognizable case. 1928 Lab. 66; 29 Cr. L. J. 65; 106 I. C. 577.

—once a Magistrate has taken cognizance of an offence, he cannot take cognizance again of the same offence, though the Police may offer a fresh report. P. 597.

—where a Magistrate has taken cognizance both upon a report such as that of the Police and upon a receipt of the Police, he cannot take cognizance again of the same offence. Ind. C. 628.

—where a receipt of the final report of the Police on a complaint the M. ordered, "enter false, mistake of law 379—109 and 447—109 I. P. C." and the complainant then applied for revival of the case. Held, that there was no complaint before the M. and he had no jurisdiction to revive the proceedings after having finally disposed of the case. 1 Pat. L. R. 97; 12 I. C. 945; 24 Cr. L. J. 945.

—when on receipt of the police report the M. ordered "false under s. 379; action should be taken under s. 211 I. P. C." and the police thereupon lodged a complaint before M., held that the M. took cognizance under cl. (b) and not cl. (c) and the complaint by the police later on was one under cl. (a) and not (b) and it was not necessary to examine the complainant, the police officer being a public servant. 1929 Cr. C. 274; 1929 Pat. 514; 10 Pat. L. T. 609.

—where the proceedings for murder was started against the accused who was sent up by the police but some witnesses stating that the murder was committed by another person and not by the accused the M. directed proceedings against the latter the procedure was bad as further proceedings should not have been taken against the other person until the accused was either convicted, acquitted or discharged. 1929 Sind 17; 115 I. C. 335.

Cognizance of offence upon information, cl. (c)

—the order of a District Judge directing the prosecution of the guardian of a minor could not be regarded as information within the meaning of this section. 87 P. L. R. 1910; 8 Ind. C. 247; 11 Cr. L. J. 602, 18 B. 635, 1 B. 340 Ref.

—a Magistrate taking cognizance on information under cl. (c) should record it though he may not be compelled to disclose its source. 10 C. W. N. 775, 35 C. 1076, 84 P. L. R. 1905; 2 Cr. L. J. 365.

—a Magistrate in taking cognizance under cl. (c) is bound to follow the provisions of s. 191, omission to do that invalidates the conviction. 6 C. W. N. 202, 3 C. W. N. 279 (note), 13 P. R. 1898, 2 Weir 151, 28 A. 212, 6 P. L. R. 333, this principle applies to s. 110 case also. 4 P. L. J. 7, 19 Cr. L. J. 899.

—a Magistrate taking cognizance against a witness on facts disclosed by another witness does so under cl. (c). 1 C. W. N. 105.

S. 190. Cognizance of offence upon information, cf.(c)—*contd.*

18 C. W. N. 921, U. B. R. 1920 Cr. 2: 11 Cr. L. J. 489. 7 Ind. C. 461
P. C. Ref. 10 Cr. L. J. 303; 5 N. L. R. 113 *Diss.*

—where a M. takes cognizance of an offence on receiving information from the police officer who was examined as witness in the case it falls under el (c). 92 I. C. 741: 1926 Lah. 325: 27 Cr. L. J. 325. 8 Lah. L. J. 613.

—having taken cognizance of the case the M. has jurisdiction to hold judicial proceedings in regard to all persons who, the evidence shows, are the offenders. 4 C. W. N. 560, 39 C. 119 *Diss.*

—the competency of the magistrate to try a person for an offence of which he has taken cognizance under el (c) is contingent on a strict observance of the provision of s. 191. 5 N. L. R. 113: 3 Ind. C. 568, 9 N. L. R. 65: 19 Ind. C. 946

—the omission to inform the accused of his rights before taking evidence is not a mere irregularity and s. 537 does not apply. 28 A. 212: A. W. N. 1905. 2 A. L. J. 745. 2 Cr. L. J. 809.

—a Magistrate taking cognizance of an offence on his own personal knowledge (inspection of the locality) must act under s. 191. 8 P. R. 1905 Cr. 170 P. L. R. 1905, U. B. R. 1897-1901 Vol. I, 59 13 A. 345: A. W. N. (1891) 102, 109 I. C. 607: 29 Cr. L. J. 591. 10A. I. Cr. R. 365.

—a Magistrate is not competent to act under s. 190 (1) (c), on any information which has been transmitted to him in another public capacity. 37 C. 221: 14 C. W. N. 589; 11 C. L. J. 415, 10 C. W. N. 775 *Ref*

direct the prosecution of the accused under s. 471 I. P. C. and refer the case under the provisions of s. 476 Cr. P. C. to another Dt. M. 2 Pat. 459: 4 Pat. L. T. 727: 74 I. C. 537.

Sub-sec (2)

—a District Magistrate has no power to order a M. having second class powers to entertain complaint disclosing an offence of murder during the absence of the Sub-Divisional Magistrate from headquarters and the prosecution based upon such a complaint is *ultra vires*, 1926 Pat. 403: 94 I. C. 896: 27 Cr. L. J. 704: 5 Pat. 447

Miscellaneous.

—the Limitation Act does not apply to the institution of criminal proceeding. 29 B. 543.

S. 190. Miscellaneous—contd.

—the expression in s. 190, "cognizance of any offence" is not equivalent to "cognizance of any offender." 4 S. L. R. 258 : 11 Ind. C. 583 : 12 Cr. L. J. 399.

—s. 190 applies to offence mentioned in s. 195 as well as to others, i. e. a Magistrate can only take cognizance of an offence mentioned in s. 195 in one of the three ways specified in s. 190. U. B. R. 1907 Cr. P. C. 1 : 6 Cr. L. J. 25, 18 A. 213, 26 A. 249, 26 B. 785, 20 C. 349, 21 M. 124, 26 M. 93 *Ref.*

—when cognizance is taken of an offence under cl. (b) or (c) the provisions of s. 200 are not applicable thereto. 2 Weir 241, 15 C. L. J. 517 : 16 C. W. N. 1105 : 13 Cr. L. J. 609.

—it is not necessary that a complaint or a police report should expressly charge an accused person to give the Magistrate jurisdiction to deal with him under cl. (a) or cl. (b). U. B. R. 1905 5th Cr. P. C. 41, U. B. R. 1902—1903 Cr. P. C.

—the Magistrate cannot make a commitment without holding a preliminary inquiry, so the section distinctly empowers him to hold a preliminary inquiry, even in cases triable by himself. 21 A. 109 : A. W. N. (1893) 186.

—where a Magistrate takes cognizance of an offence under s. 190, he should not order an opportunity of defence or wishes to support

S. 191. (Transfer or commitment on application of accused.)

—the accused are entitled to object but the Magistrate is not bound to transfer the case, he may elect to commit it to the Court of Sessions. 22 M. 148, 26 C. 786.

—the accused must be informed of his right to object to the trial, there cannot be any waiver of the right. 3 C. W. N. 279 (note), 6 C. W. N. 202, 21 A. L. J. 89 : 73 I. C. 576 : 24 Cr. L. J. 656.

—where the M. takes cognizance of an offence cl. C. of sub-sec. 1 of s. 190, it is his duty under s. 191 to inform the accused that he is entitled to have the case tried by another court. Failure to inform this is a mere irregularity but it vitiates the trial. 92 I. C. 741 : 1926 All. 325 : 27 Cr. L. J. 325, 96 I. C. 989 : 1926 Lab. 627 : 27 Cr. L. J. 1037.

—omission to inform the accused of his right invalidates the conviction. 13 P. R. 1898, 2 Weir 151, 28 A. 212, 2 P. L. R. 333, 6 C. W. N. 202, 3 C. W. N. 279 (note), 1 Pat. L. T. 446.

—when a Magistrate takes cognizance of a case on information under s. 190, 1 (cl) he must at least record the information on which he has acted, though he may not be compelled to disclose the sources of that information. 10 C. W. N. 775, 84 P. L. R. 1905 : 2 Cr. L. J. 365.

—the Magistrate is bound to disclose the information private or otherwise on which he acts and issue warrants for the arrest of the accused. 5 B. L. R. 274, 13 W. R. Cr. 1.

S. 191. Transfer or commitment on application of accused—contd.

—the mere fact that the M. had made a local inspection did not debar him from trying the charge provided he acted on independent evidence. 8 P. R. 1905; 2 Cr. L. J. 45, 3 A. L. J. 694; 1906 A. W. N. 303, 31 P. L. R. 1905; 2 Cr. L. J. 178.

—the sec. does not give the accused any right to select or determine for himself by what other court the case is to be tried. 7 Bom. L. R. 637, 2 Cr. L. J. 582, 23 M. 148

—this sec. does not apply to proceedings under Ch. VIII and XIII, 27 A. 172, but the principle applies. 29 C. 392; 6 C. W. N. 995

—when a Magistrate has framed a proceeding under s. 110 Cr. P. C. against a party and has proceeded in some measure, if not mainly, on his own knowledge of the character of the party, such M. is not a proper person to proceed with the trial. 29 C. 392, 3 P. L. J. 7.

—a subordinate M. who took cognizance of a case under sub sec. (1) (c) of s. 12, could not, after becoming District Magistrate, hear an appeal from a conviction by another subordinate Magistrate, without following the procedure under this sec. as appeal is part of trial of an offence. 12 C. W. N. 438; 7 Cr. L. J. 224.

—but the M. who did not take cognizance of a case but directed the issue of summons on the accused holding the order of the Investigating Magistrate wrong, was competent to hear the appeal. 36 C. 869.

—where the accused have every reason to apprehend that "in the further proceedings to transfer the case to the 1923 Lah. 410.

—where trial without any date or without any specific allegation as to date when and the person to whom the application was made or what the order was in respect of it, carries little weight. 1923 Cal. 320.

S. 192. (Transfer of cases by Magistrate.)

—under this sec. the whole case must be transferred. 7 C. L. J. 249.

—when on the examination of the complainant the magistrate summoned one of the accused and transferred the case for trial to a subordinate magistrate, the whole case of the complainant was transferred. 7 C. L. J. 249, but it was held in 32 C. 785 that it depended on the intention of the transferring officer which must be gathered from the order itself.

—the District Magistrate and the Sub-divisional Magistrate have co-ordinate jurisdiction as regards cases pending before Magistrates subordinate to the latter. 4 A. 366, 12 A. 66.

—the words "for inquiry" do not mean "preliminary inquiry" under Ch. XVII. M. H. C. R. Ap. 40.

—under the terms of s. 192 (2) a magistrate, who might be empowered to transfer cases was so empowered only to transfer an

S. 192. (Transfer of cases by Magistrate)—contd.

inquiry or trial relating to an accusation or charge of an offence. 4 C. W. N. 821 *Contra*. 22 C. W. N. 595, 29 C. 392, 12 C. W. N. 299.

—this sec does not authorise one subordinate magistrate to transfer a case to another subordinate Magistrate. 2 Weir 151: 7 M. H. C. R. Ap 33.

—but where a first class magistrate not being a District or Sub-divisional Magistrate transferred a case under s. 145 (1) Cr. P. C. held that although such transfer was not authorised by s. 192 (2) the proceedings might be saved by s. 529 Cl. (f), 4 C. 821, 13 C. W. N. 539.

—a Magistrate cannot transfer a case partly tried by him finding that a subordinate magistrata is also competent to try offence. 2 Weir 152, 12 A. 66

—complaint under the Cattle Trespass Act may be transferred under this sec. 34 C 926, 23 C 800 *overruled*.

—when a case is transferred to a magistrate he is the only person having jurisdiction to deal with an application or summons until the case is withdrawn from his file. 32 C. 783: 9 C. W. N. 810, 4 C. W. N. 242, 4 C. W. N. 827: 27 C. 979, 27 C. 798, 5 C. W. N. 488: 30 C. 449, 12 W. R. Cr. 53: 3 B. L. R. Ap 151

—when a Magistrate has transferred a case under s. 192 Cr. P. C. he cannot recall the case. 7 Pat. L. T. 530: 1926 Pat. 525.

—the District Magistrate is competent to transfer any case cognizable by a Criminal Court and is not restricted to criminal cases only. 35 C. 243 *Contra* 28 C. 709 p. 716, 717.

—s. 107 case may be transferred by the D. M. to first class M. subordinate to him who is incompetent to initiate such proceedings. 24 A. 151, 31 C. 350, 29 C. 389, 28 C. 709, 22 C. 898

—a direction by the D. M. that a particular class of cases should be sent to him is illegal. 10 C. W. N. 1086.

—s. 192 (2) while empowering the M. to transfer a case for inquiry or trial does not empower him to transfer a case simply for the purpose of considering the report of an investigation under s. 32 which he has himself ordered. 29 C. W. N. 508: 87 L. C. 526: 1925 Cal. 742: 26 C. L. J. 990

—s. 192 or s. 202 does not entitle a M. after he proceeded under the latter s. to make an order under the provisions of former sec. transferring the case for the purpose of being dealt with under s. 203 or 204 Cr. P. C. without a fresh investigation as contemplated by s. 202 Cr. P. C. 29 C. W. N. 508.

—D. M. is not authorised to transfer cases to subordinate M. who is not empowered to try the case under s. 28 Cr. P. C. or under some special or local law. 23 C. 445, 32 C. 300.

—an order by the D. M. to distribute works among the Honorary Magistrates is illegal 36 A 408: 15 Cr. L. J. 584.

—a case cannot be transferred to village headman under this sec. because he is not a Magistrate. 1 L. B. R. 59.

—when a case is transferred by the D. M. to a sub-divisional Magistrate the latter cannot transfer it to another

S. 192. (Transfer of cases by Magistrate)—contd.

Magistrate subordinates to him. 12 A. L. J. 225; 36 A. 166. 12 A. L. J. 277; 15 Cr. L. J. 57; 23 Ind. C. 725; 4 C. W. N. 821, 7 M. H. C. R. Ap, 33 (note). 15 Cr. L. J. 406.

—a case transferred from a subordinate Magistrate to the D. M. must be tried by the D. M. but from one D. M. to another may be made over to a subordinate magistrate. 19 A. 249

—the irregularity of transfer without jurisdiction is cured by s. 529 (f), 36 C. 1869.

—order of transfer made in good faith without power may be cured by s. 529 Cl (f) 5 C. W. N. 686, 2 C. L. J. 614.

—where the whole case is transferred to a subordinate magistrate he can take cognizance against the accused not sent up. 32 C. 783; 9 C. W. N. 810, 7 C. L. J. 249

—but when case against some of the accused is transferred to a Deputy Magistrate proceeding against other is illegal. 3 C. L. J. 88

—notice of transfer should be given to the parties. 3 A. 749; 8 C. 393; 10 C. L. R. 239, 22 B. 549, 7 C. W. N. 114.

—when a case is found to be false the absent accused cannot be summoned unless the order is set aside. 7 C. W. N. 711.

—application for the trial of absent accused should be made to the court which tried the case. 4 C. W. N. 357, 27 C. 979, 19 C. W. N. 810, 30 C. 449, and if there is *prima facie* evidence, process must be issued against the absent accused. 13 C. W. N. 103 (note).

—order of refusal to issue process amounts to a discharge. 9 C. W. N. 810

—the court to which a case is transferred is to grant sanction to prosecute under s. 211 I. P. C., 3 C. W. N. 490, 4 C. W. N. 305.

—the words of s. 192 are wide enough to include cases under Ch. XII. 22 C. 898, 2 C. L. J. 614, 10 C. W. N. 1095 *Ref.*, 28 C. 709; 5 C. W. N. 749, 31 C. 350

S. 193. (Cognizance of offence by Courts of Sessions)

—a conviction by the S. J. without the case being duly committed to him is bad for want of jurisdiction. 22 C. 50, 15 M. 352, 25 B. 493, 11 C. L. R. 55.

—except in cases in which a S. J. is expressly empowered to take cognizance of an offence as a court of original jurisdiction, it has no power to do so unless commitment of the case has been made to it. A. W. N. (1907) 178, 22 C. 58.

—a commitment in the absence of the accused is bad and a Session Judge has no jurisdiction to try such a case. 6 P. W. R. 1913, 250 P. L. R. 1913.

—if a fresh charge is substituted or added in the Session Court on which the prosecution have not had evidence even in the Sessions Court the object of the section would be frustrated. 1927 Sind 28; 97 I. C. 1041; 21 S. L. R. 55.

S. 193. (Cognizance of offence by Courts of Sessions)—contd.

—when there is a commitment the party impugning the correctness of the proceeding is to show that there is no jurisdiction. 13 W. R. Cr. 17, 4 B. H. C. Cr. 35

—the word "case" in this section cannot be extended to appeals or other matters and S. J. cannot transfer an appeal filed in his court to the court of the Assistant S. J. 13 A. L. J. 353; 37 A. 286; 16 Cr. L. J. 310. 28 Ind. C. 652

—the trial of an approver, who, in the opinion of the S. J. did not depose truly, without a commitment, is not authorised by s. 477 and is not in direct contravention of this sec. 42 P. R. 1884 Cr.

—the absence of commitment not being a defect in form but in substance, cannot be cured by a 537. 42 P. R. 1884 Cr.

—an Additional S. J. cannot exercise the powers of the S. J. under Chapter XXXII. 9 B. 164, and an application under that chapter cannot be referred to an additional S. J. under this sec. for disposal 9 B. 352.

—s 193 cl (2) should be interpreted in a liberal sense. 39 C. L. J. 75 50 C. 229; 81 Ind. C. 149.

—an Additional S. J. has jurisdiction to hear reference transferred to him by the S. J. 50 C. 299; 39 C. L. J. 75; 81 Ind. C. 149, 50 C. 985. 81 Ind. C. 61.

—where under s. 123 Cr. P. C. a M. referred to the Sessions Judge a case where the accused failed to give security for good behaviour, the latter can transfer the case to the Additional Sessions Judge for disposal. 27 C. W. N. 996.

S. 195. (Prosecution for contempts of lawful authority of public servants &c.)

N. B.—By the amendment of cl. (a) instead of "previous sanction" "complaint in writing of the public servant" has been provided, consequently sub-secs. 4, 5, 6 have been omitted, and s. 200 (a) has been newly introduced providing that no examination of the public servant is necessary; the amendment also provides for the "withdrawal of the complaint" in place "of revocation of sanction by the higher authority."

Effect of the amendment—Sanction abolished.

—a complaint based on a sanction before the coming into force of the Amending Act of 1923, does not lapse by virtue of the new Act. 83 Ind. C. 702; (1924) M. W. N. 358; 19 L. W. 392, 91 I. C. 997; 1927 Nag. 71, 95 I. C. 52; 27 Cr. L. J. 724; 1926 Lah. 131, 93 I. C. 1056; 1926 All. 421; 27 Cr. L. J. 560.

—a sanction obtained prior to the coming into force of the new Act cannot be availed thereafter. 6 Leb. 41; 26 Pooj. C. R. 152; 1925 Lah. 330.

—s. 439 Cr. P. C. as amended in 1923 makes no mention of s. 195 which was referred to in old sec. 81 Ind. C. 947; 48 B. 401.

—where sanction was applied for before amendment and the section was amended before the application was disposed of and sanction was nevertheless granted, held (1) that after the amend-

Effect of the amendment S. 195—sanction abnilehad—*conld.*

ment the court had no jurisdiction to grant sanction, (2) that the order could not be treated as a complaint within s. 195 (b) 51 C. 652 : 84 Ind. C. 62 *contra*. 83 Ind. C. 650 : 1924 A. 563 : 26 Cr. C. J. 90,

—application for sanction was made before amendment before the lower Court, District Court, acting under s. 476 A ordered prosecution under s. 476. It was legal, 82 Ind. C. 359 : 26 Bom. L. R. 713.

—a sanction for prosecution for pension granted after the 1st of September 1923 when the Amending Act came into force is illegal. 26 Bom. L. R. 1925.

—since the amendment, if a court entertains a case covered by s. 195 without such complaint as the law requires, its proceedings are void. 96 I. C. 213 : 1926 All 700 : 27 Cr. C. J. 901.

the amendment of 1923 which came into force

sanction

the court

sanction

T. 353, 46

M. L. J. 274 : 47 M. 384 *Ref.*

Object of the section.

—It is a limiting sec. providing an exception to the general rule that any person can make a complaint of a criminal offence. 1928 Lah. 510 : 110 I. C. 108 : 29 Cr. L. J. 652.

—the object of the section is to protect persons from being unnecessarily harassed by rash, baseless or vexatious prosecutions at the instance of private individuals for the offences specified 39 M. 677 : 32 M. L. J. 54.

—the object of the section is to ensure due consideration in prosecution and it should be granted for the ends of justice and not to assist private ends of individuals. 1 C. W. N. 400, 3 C. W. N. 3, 26 M. 116, 18 A. 203, 37 M. 554, 16 Cr. L. J. 167, 32 M. L. J. 54, 41 C. 446 *contra*, 1919 Pat. 250, 286.

—no one should be permitted to use a penal law merely to satisfy his own private ends or personal spite. 41 C. 446 : 19 C. W. N. 593 S. P. B.

—where the offences were committed long after the proceedings in court had come to a termination s. 195 Cr. P. C. had no application 51 C. L. J. 51 : 1930 Cal 278.

Sub-sec. (1) cl. (a)

—the absence of complaint in writing of the public servant or
renders
after
Sind

—no court can take cognizance of an offence under s. 182 I. P. C. without a complaint of the public servant concerned or his superior. 28 Cr. L. J. 902 : 105 230 : 1928 Pat. 102 : 9 Pat. L. T. 151.

S. 195. Sub-sec. (1) cl. (c)—contd.

—absence of complaint in writing as required by sec. 195 for the institution of a case under s. 182 I. P. C. is an irregularity covered by s. 537 Cr. P. C. 81 Ind. C. 620: 5 P. L. T. 505.

—a private prosecution of an accused under s. 181 I. P. C. is barred by s. 195 cl. 1 (a) Cr. P. C., 99 I. C. 401: 28 Cr. L. J. 145: 1927 Rang. 61: 4 Rang. 437.

—in case of an offence falling within s. 195 (1) (a) Cr. P. C. a complaint in writing is not necessary. —complaint to the Magistrate is not necessary. 1928

—in Central Provinces a complaint of an offence under s. 186 I. P. C. in respect of a process served can be made by Nazir or District Judge or the Judicial Commissioner but not a Sub-Judge or an Additional Judicial Commissioner. 96 I. C. 866: 1926 Nag. 485.

—where the offence of which the M. has taken cognizance is one under s. 143 I. P. C. no complaint under s. 195 Cr. P. C. is required. 1929 Bom. 433: 31 Bom. L. R. 1151: 1929 Cr. C. 545.

Subordination of public servant.

—the subordination may arise either from express enactment or from the fact that both the public servants belong to the same department, one being superior in rank to another, 18 M. L. J. 484.

—the Dt. Magistrate is, in his executive capacity, at the head of the police and the Superintendent of police is subordinate to him 1890 A. W. N. 167: 27 A. 292, 45 A. 135: 32 C. 180, 1910 P. R. 6. *contra*, 27 C. 452, 4 Lab. 130.

—a constable is subordinate to the Superintendent of Police. 19 W. R. 33.

—the Registrar of the Small Cause Court is subordinate to the Chief Judge of the Court. 27 B. 130

—the secretary of the Municipal Board is subordinate to the Chairman. 1892 A. W. N. 31

—the Police is not subordinate to the Honorary Magistrate. 1895 A. W. N. 157, 19 W. R. 33 *contra* the Honorary Magistrate. L. B. R. 101: neither the police to the Session Judge. 27 M. subordinate to the Taluk Magistrate or Village Magistrate is not. 18 M. L. J. 584.

Sub-sec. (1) cl. (b)

—the expression "in relation to any proceedings in court" is very general and wide enough to cover a proceeding in contemplation before a criminal Court though the proceedings may not have commenced when the offence was committed. 1929 Sind 132: 30 Cr. L. J. 732: 1929 Cr. C. 160: 23 S. L. R. 285: 117 I. C. 147, 1923 Bom. 105 *Fol*

S. 195, S.b.-sec. (1), cl. (b)—*contd.*

—where the alleged false document is not produced in court but the opposite party files certified copy of the document and the court holds the document to contain false entries, s. 476 or 195 (1) (b) does not apply to the case as this is no "offence committed in relation to any proceedings in any court" 32 Bom. L. R. 589

—no court can take cognizance of an offence of perjury except on the complaint of a public servant or a court. Such complaint should be produced in writing before a M. to enable him to take cognizance of the case 23 A. L. J. 35: 86 I. C. 287: 26 Cr. L. J. 75.

—in the case of an offence under s. 193 I. P. C. the complaint itself must state what was the false evidence given without leaving it to the M. to fish about and find it. 48 M. 395: 96 I. C. 449.

—no sanction to prosecute should be granted where the witness corrects his false statement in cross-examination. 1928 Lah. 862 110 I. C. 231: 29 Cr. L. J. 679.

—before sanctioning prosecution under s. 195 (1) (b) the court should consider two essential factors (1) reasonable prospect of success in the prosecution of a witness under s. 113 I. P. C. and the expediency of the prosecution in the interest of public justice, 1930 Lah. 55.

—before an order is passed under s. 476 Cr. P. C. the court must make such an inquiry that its order when sent to the M. will amount to a complaint under s. 200. For that purpose the court must decide upon and name the witnesses to be examined by the Magistrate. 48 M. 395: 86 I. C. 449.

—it is the duty of the court to make a complaint in every case that comes to its notice and which cannot be tried except on its complaint, there are only two reasons that can justify it in not doing so: one is that the offence is trivial and the other that the evidence available is not sufficient to make a conviction probable. 96 I. C. 866: 1926 Nag. 485: 27 Cr. L. J. 1010.

—where there was no intention to use the fabricated evidence in a court of law but the intention was only to use it in Police-investigation the mere fact that the question might possibly arise in a court of law in some future proceedings would not bring the case within the scope of cl. (b) of s. 195 (1). 52 B. 385: 29 Cr. L. J. 403: 108 I. C. 501: 30 Bom. L. R. 330: 1928 Bom. 130.

—where the Police filed a complaint against the accused for the offence of false charge before the Police and the accused was subsequently the accused Magistrate which was taken up taking up the case against M. under s. 195 (1) (b) was necessary because the complaint was perfectly valid when it was made, there being no complaint to the M. at that time. 29 Bom. L. R. 1590: 1928 Bom. 22: 29 Cr. L. J. 225: 107 I. C. 54, similar

S. 195. Sub-sec. (1) cl. (b)—contd.

case, 111 I. C. 858 : 1928 Ail. 765 : 51 A. 382 : 27 A. L. J. 68, but see, 10 Pat. L. T. 618 : 116 I. C. 46 : 30 Cr. L. J. 554.

—a witness cannot be convicted under s. 193 when deposition is not read over to him. 12 C. W. N. 845, 6 C. W. N. 840, 18 C. W. N. 1242, 22 C. W. N. 646 : 45 C. 825, 28 M. 38.

—where the Magistrate committed the accused to Sessions for an offence under s. 211 I. P. C. without disposing of the petition of the accused protesting against the Police investigation, the petition was a complaint within s. 4 (b) Cr. P. C. and must be disposed off according to the procedure laid down in Chap. XVI before any action against the accused could be taken under s. 211 I. P. C., the case being governed by s. 195 (1) (b) Cr. P. C. 29 Cr. L. J. 660 : 9 Pat. L. T. 236 : 110 I. C. 212 : 10 A. I. Cr. R. 417.

—where a complaint is found to be false, it is improper to prosecute the complainant before the complaint has been finally disposed of under s. 203 or otherwise. 1929 Pat. 92 : 115 I. C. 882 : 30 Cr. L. J. 545 : 10 Pat. L. T. 77.

—When a false complaint is lodged and dismissed, the M. dismissing the complaint cannot proceed against the complainant under s. 211 I. P. C. He should make a complaint under s. 195 Cr. P. C. 96 I. C. 651 : 27 Cr. L. J. 987 : 1926 Pat. 368, 86 I. C. 825 : 1925 Pat. 483 : 26 Cr. L. J. 889 : 4 Pat. 323, 87 I. C. 418 : 1925 Mad. 400 : 26 Cr. L. J. 962, 88 I. C. 1045 : 1925 Pat. 717 : 26 Cr. L. J. 1269.

—s. 195 not only applies to a complainant in a false complaint but it also applies to the abettors and instigators of the complainant, 84 Ind. C. 326 : 3 Bur. L. J. 141.

—false complaint to the police brings the case under s. 211 I. P. C. 1 A. 497, 5 A. 598, 22 B. 596, 14 C. 633, 17 C. 574 F. B.

—the false charge must be with the intention and object of setting criminal law in motion. 26 M. 640, 30 C. 415.

—complaint was made to the police, police reported the case to be false, then complaint was made to the court ; accused could not be convicted under s. 211 I. P. C. for having preferred a false charge without sanction or complaint under s. 195 4 Pat. 323 : 1925 P. 483.

—order for prosecution under a 211 I. P. C. merely on police report without giving the complainant a reasonable time and full opportunity to prove his case is bad. 5 C. W. N. 106, 31 C. 250 : 10 C. L. J. 564 : 14 C. W. N. 330, 2 M. W. N. (1911) 9 : 10 M. L. T. 47 fol. 4 C. W. N. 35 Dist.

Sub-sec. (1) cl. (c).

—for offences mentioned in s. 195 (c) the court has jurisdiction to file a complaint only against parties to the suit. 3 Bur. L. J. 344 : 26 Cr. L. J. 500 : 85 I. C. 244 : 1925 Rang. 195.

—It is not open to a court to make a complaint under s. 476 of an offence referred to in sec. 195 (1) (c), in respect of any person other than persons who were parties to the proceeding before it. 84 Ind. C. 439 : 2 R. 374.

S. 195. Sub-sec. (1) et. (C)—*contd.*

—s. 195 (1) (c) applies only to forgery committed or alleged to have been committed by a party to a proceeding before the civil court. 1929 Cal. 539; 1929 Cr. C. 194; it applies to parties and not to witnesses and counsels. 1929 Lah. 125; 29 Cr. L. J. 1061; 112 I. C. 565.

—a court has power to launch the prosecution of a person for forgery committed in respect of proceedings in court whether that person is a party or not. 100 I. C. 529; 1927 Nag. 14; 28 Cr. L. J. 305, (1926 All. 21; 49 B. 608; 1925 Bom. 433) *fol.* 2 Reng 374 *not fol.*

—a *rakil* holding a *tokalatnama* is not a "party" for the purpose of s. 195 (1) (c) and cannot be convicted in place of the client. 1929 Mad. 115; 30 Cr. L. J. 469; 115 I. C. 481; 28 L. W. 769.

—s. 195 (c) covers any document produced or given in evidence in the course of a proceeding whether produced or given in evidence by the party who is alleged to have committed the offence or by any one else. 27 Bom. L. R. 607.

—where an offence of forgery is committed by several persons and some are parties to the proceedings in which the document forged is produced, proceedings against others may be prosecuted otherwise than under the provisions of ss. 195 and 476 Cr. P. C. 1929 Mad. 115; 30 Cr. L. J. 469; 115 I. C. 481; 28 L. W. 769.

—the word "or" intervening between the words "produced" and "given in evidence" in s. 195 (c) Cr. P. C. is disjunctive and the procedure is applicable not only where the document has been given in evidence but also where it has been produced which includes cases where a document is filed in court though it may not be taken into account by the court. 9 Pat. L. T. 800; 30 Cr. L. J. 236; 113 I. C. 712; 1929 Pat. 60; 51 C. 469 *Ref.*

—offences under ss. 467 and 471 I. P. C. in respect of entries in the copies of books of account produced in court accompanying the plaint under Or. 7 R. 17 Cr. P. C. falls under s. 195 (1) (c) Cr. P. C. 49 A. 898; 1927 All. 571; 103 I. C. 204; 28 Cr. L. J. 668; 25 A. L. J. 555.

—a forged document filed in court as an annexure to a petition must be taken to have been produced within the meaning of s. 195 (c) Cr. P. C. 28 Cr. P. C. 388; 1927 Nag. 184; 100 I. C. 1044.

—Cl. (c) has been modified to include an offence committed in respect of a document produced but not given in evidence. 27 C. 887; 7 C. W. N. 112.

—when the D. J. on the report of the Munsiff as to forgery of a document referred the matter to the D. M. by a letter to take action and the case was made over to a Jot M. the letter was a complaint under s. 195 Cr. (1) (c). 35 A. B.

—only the court before which the document had been produced can file a complaint and not the Prosecuting Inspector. 1930 Lah. 225; 1930 Cr. C. 239; 12 Lah. L. J. 1.

S. 195. Absence of complaint in writing, effect of.

—absence of complaint in writing would not make a conviction illegal. The object of introducing the words "in writing" after the word complaint in s. 195 and adding cl. (a) to sec. 200 Cr. P. C., was to remove the inconvenience which might be felt if it was made incumbent on the M. to examine the complainant when taking cognizance of an offence. As the provision as regards sanction was removed from s. 195 and as it was made obligatory for the public servant concerned to make a complaint instead of giving a sanction it was thought that it would cause a good deal of inconvenience if such public servant had to attend the court and to appear before the M. in order to lodge the complaint. 5 P. L. T. 505; 81 I. C. 629; 25 Cr. L. J. 972; 1924 Pat. 691.

—where an objection as to the absence of a complaint in writing was not taken at the trial or in the appellate court but only in revision, it is not sufficient to upset a conviction under s. 183 I. P. C. 5 Pat. L. T. 505; 81 I. C. 629; 25 Cr. L. J. 972; 1924 Pat. 691.

—a case cannot be instituted under this sec. without a complaint. Section 537 Cr. P. C. provides for an error, omission or irregularity in the complaint and not the entire absence of a complaint without which no cognizance can be taken. 33 C. W. N. 285; 56 C. 824; 30 Cr. L. J. 658; 1929 Cal. 172; 116 I. C. 638; 49 C. L. J. 342.

Sub-sec. (2), "Court," meaning of.

—the "Court" contemplated by ss. 195 and 476 Cr. P. C. is the Court before which the offence is committed. When the offence of perjury was committed before the Sessions Court of one territory a portion of which was subsequently placed under a newly constituted Sessions Court, the latter though having territorial jurisdiction over the accused has no power to make a complaint regarding the offence committed before the former Court because the Cr. P. C. contemplated the trial of such offence only by the court before which it was committed. 96 I. C. 81; 28 Bom. L. R. 1296; 1927 Bom. 47; 28 Cr. L. J. 49.

—ss. 195 and 476 Cr. P. C. refer to "Court" and not to "Judge" or "Presiding Officer." So the Judge being the same or different person does not matter, it is the Court that is competent to make the complaint. 1928 Lah. 759.

—it is only the "Court" so question that can file the complaint under s. 195 cl. (1) (h) for the offence committed before it and not the particular public servant concerned. 1927 Pat. 327; 28 Cr. L. J. 643; 103 I. C. 49; 8 Pat. L. T. 674.

—the word "includes" as substituted for "means" has evidenced the scope of the court. 47 A. 934; 1925 All. 737.

—notwithstanding the use of the word "includes" in the sec. the courts which can make a complaint under that sec. are restricted to the courts detailed in s. 476 Cr. P. C. namely, Civil, Criminal and Revenue. So a Land Acquisition Collector is not a Court within s. 195 so far as s. 207 I. P. C. is concerned. 31 C. W. N. 825; 1927 Cal. 621; 104 I. C. 249; 28 Cr. L. J. 809.

S. 195. Sub-sec. (2), "Court"—*meaning of*
 —the word "court" in s. 195 (1) (c) *includes*
 including a court in the Native State such as *see*
 860 : 89 I. C. 976 : 1925 Bom. 535.

L. J. 1021.

Rulings under the old sec.

—a Registrar acting under Ss 72 to 75 of Act is *not* a court within s. 195. 2 M. L. J. 286, 15 A. 141, A. W. N. (1924) 40, 11 L. J. 50 : (1912) M. W. N. 473, 15 M. 138 *Dis*

—a certificate officer under the public Demands *Act* is a court within this sec. C. W. N. 1919 Pat. 325.

—the Land Acquisition Deputy Collector is *not* a court within the sec. 27 C. 820.

—the Tribunal constituted under the Calcutta Improvement Trust Act is a court, who can grant sanction. 45 C 385 : 19 L. J. 315.

—an Income Tax Collector is a court who can grant sanction. 15 Cr L. J. 581.

—an official assignee cannot grant sanction as it is not a civil court. 11 M. L. T. 391 : 14 Ind. C. 593 : 1912 M. W. N. 536 : 37 M. 107.

—the Small Cause Court Registrar who is empowered to decide the question of service of summons, is a court within the meaning of this sec. 16 Cr L. J. 151.

—a Collector when dealing in excise matter is not a court within this sec. 10 C. W. N. 220.

—the Collector or Deputy Collector acting under ss 69 and 70 B. T. Act is a court under this sec. 45 C. 336.

—a Magistrate passing an order under s. 144 Cr P. C. does so only as a "public servant" and not as a "court" and sub-sec. (7) of s. 195 is inapplicable to such a case. 44 M. L. J. 328 : 72 I. C. 536 : 24 Cr. L. J. 424

—It is a matter of question whether a Sub-Deputy Collector in a proceeding under the Land R. Act is a "Court" or not. 9 C. W. N. 127, 36 M. 72 : 23 M. L. J. 393 : 13 M. L. T. 367 : (1912) M. W. N. 1012.

—a *Mamlatdar* holding an enquiry under the Land Revenue Code relating to Record of Rights, is a Revenue Court who can grant sanction. 39 B. 310, 16 Bom. L. R. 678 : 2 Bom. Cr. C. 243.

—a sanction can be granted by a successor in office of a judge before whom the offence was committed. 34 C. 551 : 11 C. W. N. 119, 568 : 5 C. L. J. 508 F. B., 16 C. W. N. 623 : 15 C. L. J. 509, 11 C. W. N. 119.

—but when there are several D. Ms. and one of them is transferred, the D. M. who comes to fill up the gap is not successor in office of the transferred one. 42 C. 667 : 16 Cr. L. J. 695.

S. 195. Absence of complaint in writing, effect of. . . :

—absence of complaint in writing would not make a conviction illegal. The object of introducing the words "in writing" after the word complaint in s. 195 and adding cl. (a a) to sec. 200 Cr. P. C., was to remove the inconvenience which might be felt if it was made incumbent on the M. to examine the complainant when taking cognizance of an offence. As the provision as regards sanction was removed from s. 195 and as it was made obligatory for the public servant concerned to make a complaint instead of giving a sanction it was thought that it would cause a good deal of inconvenience if such public servant had to attend the court and to appear before the M. in order to lodge the complaint. 5 P. L. T. 505 : 81 I. C. 629 : 25 Cr. L. J. 972 : 1924 Pat. 691.

—where an objection as to the absence of a complaint in writing was not taken at the trial or in the appellate court but only in revision, it is not sufficient to upset a conviction under s. 183 I. P. C. 5 Pat. L. T. 505 81 I. C. 629 : 25 Cr. L. J. 972 : 1924 Pat. 691.

—a case cannot be instituted under this sec. without a complaint. Section 537 Cr. P. C. provides for an error, omission or irregularity in the complaint and not the entire absence of a complaint without which no cognizance can be taken. 33 O. W. N. 285 : 56 C. 824 : 30 Cr. L. J. 658 : 1929 Cal. 172 : 116 I. C. 638 : 49 O. L. J. 342.

Sub-sec (2), "Court," meaning of.

—the "Court" contemplated by ss. 195 and 476 Cr. P. C. is the Court before which the offence is committed. When the offence of perjury was committed before the Sessions Court of one territory a portion of which was subsequently placed under a newly constituted Sessions Court, the latter though having territorial jurisdiction over the accused has no power to make a complaint regarding the offence committed before the former Court because the Cr. P. C. contemplated the trial of such offence only by the court before which it was committed. 96 I. C. 81 : 28 Bom. L. R. 1296 : 1927 Bom. 47 : 28 Cr. L. J. 49

—ss. 195 and 476 Cr. P. C. refer to "Court" and not to "Judge" or "Presiding Officer." So the Judge being the same or different person does not matter, it is the Court that is competent to make the complaint. 1928 Lah. 759.

—it is only the "Court" in question that can file the complaint under s. 195 cl. (1) (b) for the offence committed before it and not the particular public servant concerned. 1927 Pat. 327 : 28 Cr. L. J. 643 : 103 I. C. 99 : 8 Pat. L. T. 674.

—the word "Includes" as substituted for "means" has evidenced the scope of the court. 47 A. 934 : 1925 All. 737.

—notwithstanding the use of the word "Includes" in the sec. the courts which can make a complaint under that sec. are restricted to the courts detailed in s. 476 Cr. P. C. namely, Civil, Criminal and Revenue. So a Land Acquisition Collector is not a Court within s. 195 so far as s. 207 I. P. C. is concerned. 31 O. W. N. 835 : 1927 Cal. 621 : 104 I. C. 249 : 28 Cr. L. J. 809.

S. 195. Sub-sec. (5), Withdrawal of complaint.

—a District M. cannot order the withdrawal of a complaint made by a court under s. 476 Cr. P. C. in respect of offence under s. 211 Cr. P. C. as such complaint is not mentioned in s. 195 (5) Cr. P. C. which gives the M. the power of withdrawal. 49 A 752 : 102 I. C. 351 : 28 Cr. L. J. 543 : 1927 All. 571.

—under section 17 Cr. P. C. the District Magistrate and not the Sessions Judge is the authority to whom the Sub-divisional Magistrate is subordinate. A complaint made by a Magistrate under s. 195 (a) is not a judicial order and the Magistrate does so as a public servant and not as a court, consequently sub-sec. (3) of sec. 195 Cr. P. C. can have no application to such a complaint. 1927 Pat. 111 : 28 Cr. L. J. 353. 100 I. C. 961 : 7 Cr. R. 466 8 Pat. L. T. 488.

—the expression "authority to which Police servant is subordinate" connotes apparently a more distinct and general entity than a departmental superior and covers the District Magistrate in relation to the Police of his District. 30 Cr. L. J. 710 : 117 I. C. 37

—while a District M. orders the withdrawal of a complaint made by a Police officer he acts in his administrative capacity and such an order is not open to interference by a judicial tribunal. 117 I. C. 37 : 30 Cr. L. J. 710.

—by reference to Rr. 16 and 17 of the Local Self Govt. Rules 1925, it may be taken that the returning officer is a public servant subordinates to the District M. Consequently the latter has authority to hear an appeal under s. 195 (5). 1929 All. 931 : 1929 Cr. C. 659.

—in view of an appeal being allowed by s. 476-B. Cr. P. C. a court cannot review its order refusing to make a complaint under s. 476. 49 A. 752 : 102 I. C. 351 : 28 Cr. L. J. 543 : 1927 All. 571.

—when an application for sanction for an offence committed in a suit before the Subordinate Judge valued at over Rs. 5000 is refused appeal lies to the District Court and not to the H. C. 1927 Mad. 683 : 99 I. C. 957.

S. 196. (Prosecution for offences against the State.)

—the section does not prescribe any particular form of order and does not even require the order to be in writing. 22 B. 112. 35 C. 141 : 7 C. L. J. 49 fol. 32 M. 3 : 5 M. L. T. 1. Ref.

—order not given to any determinate person but communicated to competent officer is legal. 44 M. L. J. 165 : 73 I. C. 155 : 1923 Mad. 328.

—the section being a disabling one should not be construed with the strictness applicable to an enabling section. 22 M. 180, 32 M. 3.

—when the letter of authority did not specify the name of the accused but he was indicated from the first and his name was

S. 196. (Prosecution for offences against the State)—*contd.*

supplied at the commencement of the proceedings of the Police Court, it was sufficient compliance with this section. 35 C. 141 : 7 C. L. J. 49 : 2 M. L. T. 500 : 22 B. 112, 14 C. 707, 37 C. 467, 15 C. L. J. 517 : 16 C. W. N. 1105 *Ref* 32 C. 464, 37 W. R. 143 *Dis*.

—where in a sanction for an offence under s. 294 A. I. P. C. the signature of the Magistrate was written on the back of the paper instead of the space on the front side, the sanction was valid. 1930 Cr. C. 97.

—in case of Local Government the authority need not be signed by the Lieutenant Governor, the signature of one of his accredited and gazetted officers is sufficient, *see the above case*.

—when the accused was not prejudiced, this defect was cured by s. 537, Cr. P. C. *see the above case*.

—where the *de facto* Local Government granted the sanction and the *de facto* S. J. tried the case, the conviction could not be questioned on the ground that the Government was irregularly constituted and the S. J. irregularly appointed. 15 C. L. J. 517.

—sanction of the Local Government required by sec. 196, must be conveyed in an order signed by the Chief Secretary and not by the Deputy Secretary for the former. 26 C. W. N. 878 : 50 C. 135 : 36 C. L. J. 180, 14 C. W. N. 1114, 7 C. L. J. 49.

—the court can take judicial notice of the signature of the Chief Secretary under s. 57 *Ev. Act*. 44 M. L. J. 557 : 72 I. C. 515 : 24 Cr. L. J. 403.

—a Magistrate making a report to the Local Government for obtaining sanction is not incompetent to take cognizance of the case. 36 C. W. N. 878

—the sanction must be in the name of Local Government and not of a single member. 20 Cr. L. J. 455.

—the accused not named in the petition of complaint though named in the sanction of the Local Government, should be discharged. 15 C. W. N. 98

—the sanction given after the filing of the complaint is of no effect. 20 Cr. L. J. 455.

—where the accused was charged under s. 121 on a police report without a complaint, the defect could not be cured by s. 537 *Punj. Rec.* 1890 p. 33 Cr. no 16, 7 Cr. L. J. 352 : 15 P. W. R. 1908 Cr.

—no new section can be added after the granting of sanction. 14 C. W. N. 1114, 16 M. 468, *Punj. Rec.* 1890 Cr. p. 33 No. 16

—when the sanction of the Local Government contains words "or any other section of the Code that may be found applicable," it is not vague. 12 P. L. R. 544.

—in a case of sedition the order to make the complaint need not specify the exact article which is the subject of the complaint. 22 B. 112.

—where the graver offence is not triable for want of sanction, conviction for minor offence is not bad. 25 B. 90 : 2 Bom. L. R. 653. 32 M. 3 : 5 M. L. J. 1 *Ref*, 19 B. 51, 340 *Dist. Contra*, 22 A. L. J. 1106.

S. 196. (Prosecution for offences against the State)—contd.

—sanction communicated by telegrams must be proved to have emanated from the Government. 20 Cr. L. J. 455

—this is a special mode laid down in the Cr. P. C. whereby the order of sanction of Govt. is to be conveyed to the officer who puts the law in motion in cases under ss. 121 or 124 A. I. P. C. All that the Court is to see is whether the complaint was made by the order or under the authority of Govt. 77 I. C. 481; 25 Cr. L. J. 401; 1925 Med. 106.

—under s. 196 A. Cr. P. C. consent in writing of the authorities therein specified is not necessary to a prosecution for a conspiracy to commit a non-cognizable offence when sec. 194 cl. (3) is applicable to the case. 50 C. 461; 75 I. C. 533.

—a sanction under s. 196 Cr. P. C. for the prosecution of the accused in the alternative for offences under s. 121 or under s. 121-A. I. P. C. is not defective on the ground that it does not specify with sufficient clearness the section or the offence in respect of which it is given. 42 M. L. J. 108; 65 I. C. 859

S. 196 A. (Prosecution for certain cases of criminal conspiracy),

—this section applies only to a prosecution for conspiracy punishable under s. 120 B of the I. P. C. and not for abetment of conspiracy punishable under s. 109 I. P. C. 49 C. 573.

—where the complaint did not disclose a charge of criminal conspiracy under s. 120 B. I. P. C. but it contained a vague allegation of conspiracy alleged in popular sense, s. 196-A, Cr. P. C. was not applicable. 1928 Med. 1158; 1928 M. W. N. 801; 52 M. 695; 113 I. C. 625; 30 Cr. L. J. 191.

—the consent of the Local Govt. is necessary under s. 196-A, Cr. P. C. in the case of persons not parties to the proceedings but who conspire with such parties to commit an offence covered by s. 195 (1). 1929 Leb. 785; 1929 Cr. C. 417.

—"not punishable with death etc." in Cl. 2 relates only to the term "cognizable offence." 40 A. 41; 18 Cr. L. J. 634.

—conspiracy, non cognizable offence, effect of omission to specify particulars in the order of granting sanction. 1924 Cal. 53.

—the proviso lays down that a sanction under this sec. for prosecution for criminal conspiracy to commit a non-cognizable offence is not necessary where the court before which the forged document was used or false claim was made, makes a complaint in respect of this offence under sub-sec. (4) s. 195. 50 C. 461.

—the sanction must be obtained before the trial begins and September 1925 by which time the sanction had been obtained and the trial was not vitiated. 54 C. 155; 101 I. C. 594; 1927 Cal. 296; 28 Cr. L. J. 466.

S. 196 A. (Prosecution for certain cases of criminal conspiracy)—contd.

—where the Local Govt. appointed an officer and delegated its power to dismiss to a subordinate authority who dismissed the officer and prosecution was launched for an offence under s. 161 I. P. C., the sanction of the Local Govt. was not necessary as it had delegated its power. 92 I. C. 857; 27 Cr. L. J. 345; 1926 All. 271.

S. 197. (Prosecution of Judges and public servants).

—to apply the sec. two conditions are necessary; (i) the accused must be a public servant not removable from his office without the sanction of the Local Govt., (ii) he must commit the offence while acting or purporting to act in the discharge of his official duty. 51 M. 259; 54 M. L. J. 570; 28 Cr. L. J. 1038; 106 I. C. 222; 1928 Mad. 161.

—to apply this section it is necessary that the criminal act constituting the offence should have been done as an official act or under the cloak of what purported to be an official act. It is the public servant put him in a . . . N. 1058; 1929 Cal. 724; 1929 Cr. . . cases only in which the offence . . . lic servant only. 31 Bom. L. R.

—no sanction is necessary unless the offence is committed in the judicial or official capacity of the judge or public servant. 3 C. W. N. 539; 26 C. 852; 30 C. 927; 7 C. W. N. 750; 23 M. 510; 25 M. 15; 32 M. 255; 2 B. 481, U. B. R. 1892-1896, Vol. I. 27.

—no sanction is necessary to prosecute the Administrator-General of Bengal for non-compliance with the Municipal Rules, appointed as administrator to the estate of the deceased person. 30 C. 927; 7 C. W. N. 750; 26 C. 852; 3 C. W. N. 539 *fol.*

—the power given in sec. 197 (2) overrides the general rule contained in s. 177, U. B. L. R. 265; 8 Cr. L. J. 70, 16 M. 468 *Ref.*

—a charge against Judge for using defamatory language to a witness cannot be entertained without sanction. 9 M. 439; 2 B. 481.

—the officer granting the sanction is to designate the offence . . .

—this section . . . ent is bad. 42 B. 172.

—s. 537 does not cure the defect of conviction without sanction under this s. 16 M. 473; 9 B. 283 F. B.

—no sanction is necessary to prosecute a sub-overseer of P. W. D. 12 M. L. T. 351; 17 Ind. C. 402; 13 Cr. L. J. 770.

—no sanction is necessary to sustain the prosecution of a Receiver for offences said to have been committed by acts in excess of his authority. 52 B. 898; 30 Cr. L. J. 465; 1928 Bom. 493; 115 I. C. 387; 30 Bom. L. R. 1273; 46 C. 432 *Ref.*

S. 197. (Prosecution of Judges and public servants)—contd.

—an Additional Dt. M. vested with the powers of the Dt. M. can pass orders under this s. 71 I. C. 244 : 24 Cr. L. J. 116 : 1923 M. 338

—a village Court executing a decree by way of distraint under s. 48 of the Act I of 1889 is a court as defined in the Act. 1929 Mad. 256 : 1929 M. W. N. 67 : 30 Cr. L. J. 402 : 115 I. C. 53 : 56 M. L. J. 600.

—a village Magistrate or a village Munsiff preparing a record alleged to be false relating to a case which was actually pending before him is a Judge and acts as such, so sanction is necessary. 1920 M. W. N. 7, 52 M. 347 : 1929 Mad. 172 : 115 I. C. 248 : 30 Cr. L. J. 396, 53 M. 602 : 1929 Mad. 659.

—sanction is not necessary to prosecute a Municipal Secretary. 1924 Lah. 310, 69 I. C. 638 : 23 Cr. L. J. 750, or the Chairman of the Municipal Council. 1927 Mad. 566 : 1927 M. W. N. 423 : 38 M. L. J. 338, but the elected Chairman of a Municipality under the Bengal Municipal Act is a public servant within this sec. 32 C. W. N. 1035 : 1928 Cal. 516 : 56 C. 227 : 30 Cr. L. J. 348 : 114 I. C. 785.

—sanction is necessary to prosecute a Member of the Municipal Board. 1928 All. 756 : 10 A. I. Cr. R. 450 : 51 A. 377 : 30 Cr. L. J. 62 : 113 I. C. 78.

—sanction is not necessary in a complaint against a Municipal Commissioner when there is nothing to show that he acted in the discharge of his official duty as a Municipal Commissioner. 1928 Lah. 72 : 29 Punj. L. R. 69 : 109 I. C. 239 : 8 Lah. 647, 50 M. 754 : 102 I. C. 347 : 1927 Mad. 566 : 1927 M. W. N. 423 : 28 Cr. L. J. 539, 1928 Mad. 1158 : 1928 M. W. N. 801 : 52 M. 695 : 30 Cr. L. J. 191.

—a Municipal Commissioner moving the court to issue a search warrant against a person acts as a public servant and when he is accused of an offence done in the discharge of his duty provision of s. 197 Cr. P. C. will apply. 1930 Lah. 147 : 1930 Cr. C. 119.

—in a criminal complaint against a *Mukhtarkar* whose duty is to keep his office compound in a sanitary condition sanction of Commissioner is necessary. 1930 Sind. 144 : 1930 Cr. C. 527.

—a District Board member is a "public servant who is not removable from his office save by or with the sanction of the Local Government" within the meaning of s. 197, and when on an auction sale held by him as an officer of the Board, he purchases a thing in the name of his servant for his own use, it is an offence committed "while acting or purporting to act in the discharge of his duty." 2, C. W. N. 395 : 88 I. C. 517 : 26 Cr. L. J. 1157 : 1925 Oudh. 565.

—a Revenue *patil* is not removable from his office save by or with the sanction of the Local Govt., so no Court can take cognizance of the offence under s. 420 I. P. C. except with the previous sanction of the Local Govt. 1927 Bom. 432 : 103 I. C. 342 : 29 Bom. L. R. 707 : 28 Cr. L. J. 534 : 42 B. 172 *Ref.*

—the President of a *Taluk* Board is a public servant removable only by the Local Govt. 28 L. W. 695 : 52 M. 446 : 1928 Mad. 8 : 113 I. C. 462 : 30 Cr. L. J. 164 : 56 M. L. J. 177, so also the President of Panchayat Board. 1928 Mad. 391 : 29 Cr. L. J. 324 : 103 I. C. 66 but

S. 197. (Prosecution of Judges and public servants)—contd.

ordinarily the President of a Union Board is not a public servant being removable under s. 44 of the Madras Local Boards Act, but when he accepts or rejects the nomination paper under R. I. for the conduct of the election of members of Taluk and Union Boards he acts as a Judge giving a judicial decision in a legal proceeding. 1929 Mad 175 : 30 Cr. L. J. 365 : 114 I. C. 817.

—a member of a Union Committee in Bengal is not a person who is removable only by the Local Government and hence no sanction is necessary under s. 197 to prosecute him. 29 C. W. N. 650 : 52 C. 431 : 88 I. C. 602 : 1925 Cal 782 : 26 Cr. L. J. 1178

—it is no part of British policy to set an official above the common law. If he commits a common offence he has no peculiar privilege. But if one of his official acts is alleged to be an offence the state will not allow him to be prosecuted without its sanction : for otherwise official action would be beset by private prosecution. This privilege however only extends to acts which can be shown to be in discharge of official duty, or fairly purporting to be in such discharge. 1927 Mad. 566 : 1927 M. W. N. 423 : 52 M. L. J. 647.

—action taken under this sec. is more of the nature of an executive than judicial action, so the fact that reasons are not stated does not vitiate the proceeding. 71 I. C. 244 : 1923 Mod. 338.

—in the sanction the Govt. need not specify the offences with the same degree of precision as in a charge. A sanction is not vitiated by the mistake of date. 1927 Bom. 501 : 29 Bom. L. R. 996 : 106 I. C. 100 : 28 Cr. L. J. 1012.

S. 198. (Prosecution for breach of contract, defamation and offences against marriage).

—whether the complainant is a person aggrieved is to be determined by the circumstances of each case and by the nature of the offence. 3 C. L. J. 38, 3 Cr. L. J. 187, 25 B. 151, 32 C. 425 *Ref.* 10 B. 340 *Expl.* 105 I. C. 820 : 1928 Nag. 58 : 28 Cr. L. J. 996.

—the grievance referred to does not contemplate any fanciful or sentimental grievance, it must be such grievance as the law can appreciate. 3 C. L. J. 38.

—it is impossible to lay down any inflexible rule for determining whether the complainant is a person aggrieved within the meaning of this sec. 3 C. L. J. 38

—the brother of a lunatic is not a person aggrieved to complain against the wife of the lunatic for bigamy. 10 B. 340, 25 A. 132, 3 C. L. J. 38 : 3 Cr. L. J. 187, 7 Cr. L. J. 457 : 11 C. C. 148 : 7 Cr. L. J. 457, 26 C. 336.

—the brother of a Hindu widow living in his house is the person aggrieved to complain for any imputation made against her character. 32 C. 425 : 8 C. W. N. 515 : 3 C. L. J. 38 *Expl.* 32 C. 1060 : 9 C. W. N. 847 : 2 C. L. J. 396 *Dis.*

—husband is the person aggrieved in a case in which the imputation of unchastity is made and published against the wife. 15 M. L. J. 224 : 2 Cr. L. J. 381 : 10 Cr. L. J. 263, 14 M. 379, 25 B. 151 F. B., 84 I. C. 646 : 1924 Lah. 559, 26 Cr. L. J. 342.

S. 198. (Prosecution for breach of contract, defamation and offences against marriage)—*contd.*

—In case of bigamy the father is not the person aggrieved, 32 A. 78.

—the husband is also the person aggrieved under s. 494, 26 C. 336

—mother of a minor husband, aged sixteen, is not a person aggrieved for the purpose of making complaint under s. 494 I. P. C. 2 Weir 231,

—the son cannot complain when the mother is defamed, 1893 A. W. N. 207.

—in case of bigamy, the person aggrieved is either the first husband or the second husband and not the father. 7 A. L. G. 10 : 32 A. 78.

—It is not necessary that the complainant should state precisely the section of the Code under which the accused shall be charged, statement of facts constituting offence is sufficient, 25 A. 209. A. W. N. (1903) 7, 3 C. L. J. 38 : 3 Cr. L. J. 187 Ref., 1 C. L. R. 523 approved.

—several persons may be equally aggrieved under this sec. 2 Weir 231.

—a president of a Municipal Commission is not a person aggrieved in respect of defamatory statement against the subordinates officers. 26 M. 43.

—when offence relating to marriage is before a Magistrate he may proceed against any person implicated for any offence. 1 C. L. R. 523, 30 Punj. Rec. (1895) 63, 29 C. 415, 5 A. 233.

—under this section the complaint of a person aggrieved is necessary only in the case of the substantive offences mentioned in the section but not in the case of abetment of them, in this case the offence was of abetment of bigamy. 91 I. C. 533 : 27 Cr. L. J. 101 : 1926 All. 189.

—the principles of Criminal Law as to the allegations required to be made and proved in a complaint under s. 198, of the offence of abetting the sale of a news paper containing defamatory matters discussed. 8 P. R. 1891 Cr., 12 P. R. 1883 Cr., 18 P. R. 1889 Cr. Ref.

—no complaint is necessary in respect of altered finding of the appellate court under s. 423 (i) (h), 25 A. 534.

—a charge of defamation not contained in the petition of complaint but added subsequently during examination is not a legal complaint. 10 A. 39, 5 A. 233.

—In the case of defamation of a married woman her husband is a person aggrieved within the meaning of sec. 198 Cr. P. C. 84 Ind. C. 646 : 1924 Lahore 539 : 5 L. 301, 20 L. W. 921 : 47 M. L. J. 746, (14 M. 379, 25 B. 15.) *fol.*

S. 199. (Prosecution for adultery or enticing a married woman).

—a minor husband cannot be represented by another in prosecution for adultery. 2 Weir 235.

S. 199. (Prosecution for adultery or enticing a married woman)—*contd.*

—where the husband complained under s. 366 and s. 379 I. P. C. the accused could not be convicted under s. 498 although the husband deposed in the case making statements constituting offence under s. 498. 14 Bom. L. R. 141; 1 Bom. Cr. C. 82; 14 Ind. C. 971; 13 Cr. L. J. 287; 24 W. R. Cr. 18, 29 C. 415; 6 C. W. N. 677, 27 M. 61, 10 A. 39, *contra* 38 A. 276.

—where the accused was charged with kidnapping or abduction but was convicted under s. 498 on the evidence, the conviction was wrong as there was no complaint under that s. 27 M. 61; 2 Weir 236, 9 Bom. L. R. 148; 31 B. 218, 30 C. 910; 8 C. W. N. 17 F. B., *contra*, 20 C. 483 where it was held that if the evidence be insufficient for graver offence there may be conviction for minor offence.

—where the complaint is under s. 497, conviction under s. 498 is bad. 12 C. W. N. 116, 18 P. R. 1873.

—the death of the husband complainant cannot destroy the jurisdiction as there can be no abatement of a criminal prosecution. 1 S. L. R. Cr. 72; 8 Cr. L. J. 190.

—a committing Magistrate cannot alter a charge of rape into one of adultery. A W. N. (1882) 165 and a charge under ss. 363 and 366 cannot be altered into a charge under ss. 363, 366 and 498. 9 Bom. L. R. 148; 31 B. 218; 5 Cr. L. J. 164, 39 P. L. R. 1911; 32 P. R. 1910 Cr. 12 Cr. L. J. 50; 8 Ind. C. 1160.

—the word "absence" in the section must be absence from the place. The Legislature has made no provision for the protection of the lunatic, paralytic or invalid husbands, and the word "absence" cannot be taken to include such cases. 3 S. L. R. 15 Cr.; 9 Cr. L. J. 450; 1 Ind. C. 941.

—a complaint of an offence under s. 498 I. P. C. cannot be made by a person to whom the woman had been sold by her husband and with whom he had contracted a marriage by *kararh*. 26 Panj. L. R. 382.

—nor can such proceeding when started by an agent of the husband be compounded under s. 345 by that agent on behalf of the husband. 71 L. C. 248; 24 Cr. L. J. 120.

—a complaint referred in this sec. must be to a Magistrate. A complaint to the police is not sufficient. 1923 M. 59.

S. 200. (Examination of complainant).

N. B.

Cl. (a) has been added providing that in the case of a complaint under s. 476 the examination of the complainant shall be dispensed with.

—on receipt of a complaint four causes are open to the Magistrate under the law. He may either order an inquiry under s. 203 or dismiss the complaint under s. 203 or issue process under s. 204 or postpone the commencement of the proceeding under s. 344 Cr. P. C., 43 C. L. J. 388; 1929 Cal. 281.

S. 200. (Examination of complainant)—*contd.*

—the object of the examination of the complainant under s. 200 is to ascertain if there is a *prima facie* case and prevent the issue of process when the case is clearly false, frivolous or vexatious. 88 I. C. 189; 26 Cr. L. J. 1101; 1925 Sind 328.

—any person having knowledge of the commission of the offence may complain although he has no interest in it. 13 B. 600, 21 B. 536, 18 A. 465, *Contra*. 21 M. 246.

—but the complainant must have personal knowledge of the matter complained of. 10 C. W. N. 775, 11 C. W. N. 170; 5 Cr. L. J. 13, 15 C. L. J. 517; 16 C. W. N. 1105.

—the Magistrate must examine the complainant on oath. 18 C. W. N. 1020, 88 I. C. 189; 1925 Sind 328; 26 Cr. L. J. 1101, 94 I. C. 903; 1926 Sind 194, failure to do that is an irregularity which may be cured by s. 537 Cr. P. C., unless the accused has been prejudiced thereby. 1929 Cal 175 116 I. C. 722 30 Cr. L. J. 706, 10 Pat. L. T. 779 1929 Pat. 473 30 Cr. L. J. 1056; 119 I. C. 413. 1929 Cr. C. 341 F. B., 13 A. L. J. 840, 1 P. L. J. 592 18 Cr. L. J. 366, 23 C. W. N. 481, 484, 22 M. L. J. 155 *contra*. 20 Cr. L. J. 481, 6 C. W. N. 840, 76 I. C. 189. 1924 Lah. 258.

—omission to examine a complainant on oath under this sec. is a mere irregularity covered by s. 537 of the Code. 81 Ind. C. 218; 19 L. W. 461, 76 I. C. 189; 1924 Lah. 258, *contra*. It is a serious irregularity justifying interference in revision. 43 M. L. J. 710; 16 L. W. 220; 1922 Mad. 443.

—non-compliance with this sec. in recording the statement of the accused is not cured by s. 537, 6 C. W. N. 840, 7 C. W. N. 525; 30 C. 923, U. B. R. 1910, 4th Qr. 74; 11 Ind. C. 249; 12 Cr. L. J. 385, *contra*. 81 Ind. C. 218; 19 L. W. 461.

—where a police officer makes a complaint to the M. in respect of a cognizable offence his examination by the M. is not necessary, 1929 Pat. 514; 10 Pat. L. T. 601; 1929 Cr. C. 274.

—it may frequently be a sufficient compliance with s. 202 if the Magistrate reads it over to the complainant and the latter is asked on oath to subscribe to it 6 Bom. L. R. 66.

—it is not sufficient to make the complainant attest the complaint on oath without examining him. 3 C. W. N. 77, 17 C. W. N. 448, 9 A. 666, 18 A. 236.

—the complainant cannot be examined on commission. 31 Punj. Rec. (1896), 24, *contra*. 18 C. W. N. 1020.

—although s. 200 applies to maintenance cases, yet *parda-nashin* applicants need not appear in open court. 8 C. 142.

—calling for A-form against the accused complying with s. 200 or a 202 is without jurisdiction where there was no material before court. 10 C. W. N. 773; 3 Cr. L. J. 471.

—the provisions of ss. 200 and 203, do not apply to s. 553 Cr. P. C. where no offence is alleged. 4 Bom. L. R. 609.

—this section is subject to the provision of s. 476 Cr. P. C. 13 B. 109, 36 Punj. Rec. 58, 7 A. 871, 13 M. 144, 25 M. 93.

S. 200. (Examination of complainant)—contd.

—the investigation must be conducted by the M. personally.
10 A. L. J. 79: 13 Cr. L. J. 704.

Cr. P. C.
charge-
C. 303:

—the Magistrate who receives a complaint and examines the complainant must deal with it himself under s. 203 or 204 and can send it to the D. M. for orders. 10 C. W. N. 1086: 4 Cr. L. J. 230.

—the Magistrate dismissing the complaint must record the reasons. 14 C. 141.

—unless a complaint is disposed of in a manner known to the Cr. P. C. it must be regarded as still pending and the M. must take it up for disposal after taking sworn statement. 1929 Mad 149: 1929 M. W. N. 503: 1929 Cr. C. 511.

—the Cr. P. C. draws a clear distinction between jurisdiction to try and jurisdiction to investigate. 2 Pat. 379: 4 Pat. L. T. 521: 72 I. C. 375.

—a complaint recorded by a M. under s. 200 constitutes "credible information", upon which the police can effect an arrest under s. 54 Cr. P. C. even in the absence of a process issued by the M. 4 Pat. L. T. 521: 72 I. C. 375.

—under the present state of law it cannot be contended that the substance of the oral examination is inadmissible in evidence under s. 91 of the Evidence Act in proof of the statement contained therein. 89 I. C. 713: 1926 Nag 141: 26 Cr. L. J. 1401

—there can be no absolute rule of law laid down as to which of the counter-cases should proceed first or whether both of them should proceed simultaneously. It is to be decided according to the circumstance of the case. 49 C. L. J. 388: 1929 Cal. 281.

S. 201. (Procedure by M. not competent to take cognizance).

—when a complaint containing the charge of murder is filed before a Magistrate exercising second class power during the absence of the sub-divisional Magistrate, he cannot entertain the complaint though authorised by the District Magistrate as the latter has no power to so authorise. 5 Pat. 417: 7 Pat. L. T. 335: 1926 Pat. 400: 94 I. C. 896.

S. 202. (Postponement of issue of process.)**Amendments.**

The changes that have been introduced by the amendments are:—
(i) even the third class Magistrates have been authorised to act under this sec. save and except directing inquiry or investigation by others.
(ii) authority has been given to make preliminary inquiry in any case the M. thinks fit for reasons to be recorded, (iii) the words "enquiry or investigations" have been substituted for the expression "previous local investigation" giving power to take evidence upon oath.

S. 202. Application of the section.

—this section applies only to cases where there is a "complaint" as distinguished from a mere information. A Magistrate acting upon second-hand information cannot be said to be acting upon complaint. 1888 P R 24

—a Magistrate taking cognizance of a case upon a police report cannot act under this section and cannot refer the case to a subordinate Magistrate for local investigation. 40 C. 854, 17 C. W. N. 824; 2 P. L. T. 220.

—this section does not apply when evidence commences after the issue of process 9 M 282, 21 W. R. 44.

—provisions of ss. 200 and 203 are inapplicable to maintenance case under s. 488, 29 P R 1905 Cr and to proceedings under s 107. 29 Cr. L. J. 866; 1928 Lab 694; 111 L. C. 450

—the investigation under this sec. is not judicial investigation. 27 C. 921, 2 Weir 167.

—the Magistrate should follow the strict procedure laid down in ss. 202 and 204, 11 C. L. J. 921; 22 Ind. C. 165; 15 Cr. L. J. 24.

—the complainant must be examined before proceeding under this sec. 3 C. W. N. 305, 27 C. 921.

Postpone the issue of process.

—after the examination of the complainant the process shall ordinarily be issued unless the M. has reason to doubt the truth of the complaint when he can order an enquiry or local investigation. 27 C. 798

—this sec requires that reasons should be given for the postponement of issue of process but the failure to do that is a mere irregularity. 33 C. W. N. 369; 1929 Cal. 176; 49 C. L. J. 164; 116 I. C. 721.

—if the accused appears of his own accord without summons, he is entitled to require that the complaint shall be proceeded with or dismissed 26 b. 532.

Preliminary enquiry and local investigation.

—a Magistrate receiving a complaint may at his discretion either issue process at once or may make a preliminary enquiry under this sec. and thereafter issue process. 1929 Pat. 644; 1929 Cr. C. 372

—the object of the enquiry is to afford an opportunity to the Magistrate to remove his hesitation in issuing process. 10 Pat. L. T. 618; 116 L. C. 46; 30 Cr. L. J. 554.

—unless the complainant is duly examined no enquiry can be ordered or report called for. 27 C. 921; 4 C. W. N. 305, 1 Pat. L. T. 564, 20 Cr. L. J. 552 (Pat).

S. 202. Preliminary enquiry and local investigation—*contd.*

complainant. 20 M. 387, 15 B. 590, 21 C. W. N. 127, A. W. N. (1900) 187. Omission to record is merely an irregularity and is not a ground for setting aside an order for postponement unless it has occasioned a failure of justice. 25 M. 546 : 2 Weir 245, 5 M. L. T. 79 : 2 Ind. C 618, 2 Weir 244, 15 A. L. J. 640. 11 A. L. J. 754, *contra*, it is not merely an irregularity but a grave illegality as the provision is imperative. 27 C. 921, 40 C. 41, 14 C. 141.

—investigation partly by the M. himself and partly by Police without writing the reasons for so doing is not in accordance with s. 202. 1928 Lah. 88 : 111 I. C. 878.

—a departmental inquiry previous to the complaint in which the accused has been exonerated cannot be substituted for an inquiry provided by this section. 32 P. R. 1837 Cr., 14 P. R. 1891 Cr.

—a complaint under s. 107 Cr. P. C. should not be dismissed by a M. upon the report of a *Zaildar*. 29 Punj. L. R. 271 : 1928 Lah. 119 : 9 Lah. L. J. 548 : 107 I. C. 603 : 29 Cr. L. J. 267.

—there is nothing in sec. 202 to prevent an investigating officer from making a full inquiry by obtaining information from the complainant and his witness and the accused and his witness if any. 33 C. 1282, 6 C. L. J. 705 *fol.* 12 C. W. N. 678 : 7 Cr. L. J. 499, 14 M. L. T. 200 : 1914 M. W. N. 728 : 21 Ind. C. 129, 25 M. L. J. 510, *Ref.* 36 C. 924 : 11 C. L. J. 50 : 13 C. W. N. 1121 *Dist.*

—it is open to the M. to investigate into the matter in order to ascertain the truth or falsity of the complaint in any way he thinks proper. 1924 P. 797 : 1924 P. H. C. C. 220.

—if the complainant is not speaking from personal knowledge, a M. taking cognizance would exercise a wise discretion in making the enquiry under this section. 25 C. W. N. 357.

—to ascertain the truth of the complaint the Magistrate may take any preliminary step; he may call upon the accused to show cause why a process should not be issued. 6 Bom. L. R. 91.

—a local investigation can be ordered when there is a quarrel about boundaries or any matter of that kind. 10 A. L. J. 79.

—the words "local investigation" are not restricted to the investigation of the physical features only but they mean an enquiry made in the complaint the investigation section. 19 Cr. L. J.

126 (Pat).

—a local investigation can be directed to a subordinate M. and not to a superior M. 30 C. 101 : the investigation can be made by a subordinate M. or by a pleader.

—the M. may obtain the defence.

—in a complaint against police-constable the complainant could be given every opportunity to prove his case by examining

S. 202. Preliminary enquiry and local investigation—contd.

witnesses, summary dismissal of such complaint is improper. 91 I. C. 539 : 1926 Mad. 288 : 27 Cr. L. J. 107.

—when a M. holding inquiry under s. 202 Cr. P. C. gets evidence contradictory to the allegations of the complainant, the M. should give opportunity to the complainant to meet that evidence. 1928 Mad. 135 : 29 Cr. L. J. 48 : 105 I. C. 461 : 9 A. 1. Cr. R. 297.

"Direct an inquiry." meaning of.

—the transfer of a case by a District Magistrate under the orders of the High Court does not amount to a direction under s. 202 (1) Cr. P. C., it contemplates a transfer of the whole case to an officer competent to try the case. 95 I. C. 935 : 1926 Pat. 358 : 27 Cr. L. J. 855 : 7 P. L. T. 420.

—s. 192 (1) Cr. P. C. while empowers a Magistrate to transfer a case for inquiry or trial, does not empower him to transfer a case simply for the purpose of considering the report of the investigation under s. 202 which he has himself ordered. 29 C. W. N. 508 : 87 I. C. 546 : 1945 Cal. 742 : 26 Cr. L. J. 990.

Magisterial inquiry.

—a Magistrate cannot refer the complainant to another Magistrate for inquiry and report or for disposal. 18 C. W. N. 95 : 22 Ind. cas 422, 38 C. 68, 20 C. W. N. 63, 27 C. 921, 18 Cr. L. J. 754 but see 23 C. W. N. 484, 623, sending out a sub-deputy Magistrate to hold a local investigation and then examining him as a witness does not vitiate the case if the s. 414, a deputy Magistrate in charge order local investigation and Magistrate to whom he is sent.

C. 484 : 13 Cr. L. J. 484 : 39 C. 1041. But the amendment empowers such persons to hold such enquiries and investigations and it was also held that an order referring the complaint to a subordinate Magistrate for inquiry and report was legal. 46 C. 854.

—a person to whom a complaint is sent for inquiry is not prohibited from importing his personal knowledge into it or from examining witnesses competent to throw light on the matter. 30 Cr. L. J. 1160 : 129 I. C. 69.

—a Magistrate who holds an enquiry under s. 202 is not disqualified from trying the case himself. 24 C. 167, 4 C. W. N. 604. Where the M. took an active interest in the investigation and in collecting evidence he was disqualified to try the case. 23 C. 828, 20 C. 857, 8 N. L. R. 1.

—a Magistrate making an enquiry under this sec. can sanction prosecution under s. 211 I. P. C. 13 C. W. N. 122, 17 C. 221, and can direct prosecution of the complainant under s. 476 Cr. P. C. 36 C. 72.

—when the Magistrate once ordered investigation by another person he cannot himself make further investigation in the absence of the accused. 11 A. L. J. 754 : 14 Cr. L. J. 493 : 20 Ind. C. 749, but he may hold an inquiry even after a local investigation.

S. 202. Magisterial inquiry—*contd.*

made by a subordinate officer if he is dissatisfied with the result of such investigation. 38 C. 68.

—so also if the M. chooses inquiry into the case himself an order directing local investigation is irregular. 44 A. 550, and the M. taking cognizance of the case cannot refer it to a subordinate Magistrate for calling upon the accused to show cause against prosecution and for submitting a report thereon. 46 C. 807.

—where a Judge is sole Judge of both law and fact, he cannot give evidence before himself; when an officer visits a place for the purpose of understanding the evidence laid before him he should take care that information reaches him with reference to the occurrence which he is to investigate beyond what he acquires from the view of the place. 21 C. 920, 19 M. 263; 6 M. L. J. 143, 27 A. 33; A. W. N. (1905) 151, 37 C. 340; 11 C. L. J. 335; 14 C. W. N. 422 *Ref.*

Police enquiry.

—it is abuse of powers under sec. 202 to refer petty cases to the police for inquiry 19 P. R. 1894 Cr

—a Magistrate cannot order police investigation except 'under the condition stated in s. 202; e., for reasons stated by him he distrusts the truth of the complaint A. W. N. (1902) 193, 20 M. 387, A. W. N. 1884 *Fol.*

—the M. can direct the police to make an inquiry under s. 202 but he cannot direct the police to treat the complaint as first information. 108 I. C. 333; 1928 Pat. 359; 29 Cr. L. J. 374.

—it is not proper to make indiscriminate use of police agency for investigating complaints. 12 B. 161.

—when the complaint is against the police it is not proper to call for the report from the Police officer who is himself the accused. 14 C. 141, or from some other Police officer 47 A. W. N. 1884 18 A. L. J. 620, 109 I. C. 878; 1928 Lah. 83 or from a superior Police Officer. 9 C. W. N. 129, 18 A. L. J. 731, 20 M. 387, 22 Cr. L. J. 348 (All).

—the failure to take down the deposition of witness by the M. in cases where he had before him the Police report containing a detailed account of the statements of the Police is not an error of law as s. 202 does not make any provision with regard to the manner of preliminary inquiry 3 Pat. L.R. 77 Cr., 89 I. C. 386; 1925 Pat. 584; 26 Cr. L. J. 1346.

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Hearing defence before issue of process.

—the M. cannot call upon the opposite party to show cause why process should not be issued against him and hear him through pleader. 36 C. L. J. 414; 27 O. W. N. 196.

S. 202. When dismissal of complaint is legal and when illegal.

—the Magistrate can dismiss a complaint while sitting in his private room and without giving the complainant or his pleader an opportunity of being heard. 10 C. W. N. 1086.

—he can dismiss a complaint without any investigation, if

J. 126 (Pat).

—where there was no previous local investigation ordered under s. 202 nor any examination of the complainant under s. 200 Cr. P. C. the Magistrate had no jurisdiction to dismiss the complaint 30 C. 923.

—when the subordinate Magistrate makes an elaborate enquiry and examining a

was no case, the

—when the Magistrate does not dismiss the complaint without giving the complainant an opportunity to support his case. 16 C. W. N. 143.

—in the absence of any finding that the complaint was false or unsustainable on the evidence likely to be available, the passing of an order of dismissal under this section constitutes an irregularity, 33 M. 512, 25 M. L. J. 510; 14 Cr. L. J. 633; 21 Ind. C. 681, 27 C. 126, 33 C. 1282, 13 B. 590.

—dismissal of a complaint without examining the complainant in contravention of s. 203 and prosecution of the complainant under s. 211 I. P. C. is illegal. 48 B. 360. 26 Bom. L. R. 183; 81 I. C. 608; 25 Cr. L. J. 960.

—dismissal of the complaint without examining the complainant is illegal. 13 B. 590, 4 M. H. C. R. 162.

—dismissal of complaint after examining only some of the prosecution witnesses and the complainant and taking statement of the accused is illegal. 11 A. L. J. 451; 14 Cr. L. J. 412; 20 Ind. C. 236.

—in case of complaint of a serious crime such as murder the dismissal of the case without any judicial examination of the complainant or his witnesses is extremely illegal. 23 C. W. N. 392.

Examination of complainant.

—when the deposition in the shape of a complaint is made orally or in writing and is sworn to, the requirements of s. 203 as regards examination of the complainant are sufficiently complied with. 4 Bom. L. R. 609, 2 M. W. N. 356; 10 M. L. T. 573; 12 Cr. L. J. 550; 9 All. 666.

—dismissal of the complaint without examining the complainant, in contravention of s. 203 and prosecution of the complainant under s. 211 I. P. C. is illegal. 48 B. 360; 26 Bom. L. R. 183; 81 I. C. 608; 25 Cr. L. J. 960.

S. 202. Further inquiry when legal.

—order of further inquiry into a complaint dismissed under s. 203 without notice to the accused, though not absolutely illegal, is so unfair and prejudicial to the accused that it should not ordinarily be maintained. 44 P. W. R. 1911, 12 Cr. L. J. 615; 12 Ind. C. 991, 4 C. W. N. 100, *Fol.*

—but it has been held by the Full Bench of the Madras High Court that an order under s. 436 Cr. P. C. for further inquiry into a complaint dismissed under s. 303 is not bad for want of notice to the accused as the dismissal of the complaint does not amount to a discharge of the accused. 44 M. 918; 99 I. C. 337; 1927 Mad. 19; 28 Cr. L. J. 129, 51 M. L. J. 605 F. S., 47 A. 712.

—where the complaint was not dismissed under s. 203 or 204, sub sec. 3 and none of the accused was discharged, the S. J. had no power under s. 437 to direct further inquiry. 27 C. 658, 12 C. W. N. 68.

—where the order of dismissal is set aside by the S. J. the only order he can make in revision is to direct the M. to make a further inquiry into the complaint. 1928 All. 681; 9 L. R. 88 Cr., 10 A. I. Cr. R. 99.

—the Dt. M. cannot order further inquiry in the absence of any allegation of improper conduct on the part of the trying officer. 1 Pat. L. R. 28; 73 I. C. 950.

—where a complaint was dismissed under s. 203 by a Deputy Magistrate and the District Magistrate declined under s. 437 Cr. P. C. to order further inquiry, but sent back the petition to the Deputy Magistrate for further inquiry, the latter could revise the complaint. 13 C. W. N. 193; 36 C. 415; 5 M. L. T. 95; 9 Cr. L. J. 563.

—an order under s. 437 Cr. P. C. for further inquiry may be made without notice to the accused. 6 C. W. N. 638; 29 C. 457, 15 C. 608 p. 624, 16 M. 41, 35 A. 78, *contra*, the accused should be given an opportunity of being heard when the complaint was dismissed by the M. on hearing him. 27 C. W. N. 552.

—s. 436 does not lay down any rule that further inquiry should only be directed when it is found that the judgment is perverse or foolish. The rule is that the superior court should not lightly discard the estimate of evidence appraised by the trial court and should not set aside the dismissal of complaint simply because a different view of evidence might be taken. 104 I. C. 633; 28 Cr. L. J. 857; 1929 Pat. 12, 4 Pat. L. J. 456, 5 P. L. J. 47 *Ref.*

—when the S. J. makes order for further inquiry, trying Magistrate cannot dismiss the complaint under s. 203, 11 C. W. N. 316 *contra*. Second order of dismissal under this section by the same Magistrate is perfectly legal. 25 C. W. N. 312.

When complainant is absent.

—when the complainant was not present on any of the dates on which the matter was taken up and the M. dismissed the complaint under s. 203 Cr. P. C. the order of dismissal was justified and the complainant could not subsequently apply for further inquiry. 48 C. L. J. 90; 1928 Cal. 569; 29 Cr. L. J. 793; 111 I. C. 126.

S. 202. Re-hearing when legal.

—it is competent to a Magistrate, who has once dismissed a complaint under s. 203 to re-hear the complaint although his order of dismissal has not been set aside by a higher court. 29 M. 126; 16 M. L. J. 79. 1 M. L. T. 31 F. B.

—when a complaint is dismissed under s. 203 not only has the accused no right under the law to appear either before the trial court or before the revision court but the accused cannot be allowed to appear at that stage. 49 C. L. J. 422; 1929 Cal. 508; 30 Cr. L. J. 1630; 119 I. C. 376.

When fresh complaint is maintainable.

—a fresh complaint is maintainable on the same facts. 29 A. 7, 29 M. 126, F. B., 36 A. 53, 21 A. L. J. 215; 71 I. C. 696; 1923 All. 332, 92 I. C. 895; 1926 All. 298; 27 Cr. L. J. 383.

—the Magistrate can reinstate the case either on fresh complaint, 37 A. 628, or on police report. 15 C. L. J. 1, *but see below*.

—a fresh complaint is not tenable on the same facts unless the order of dismissal is set aside. 24 C. 286; 1 C. W. N. 185, 28 M. 255, 23 C. 988; 1 C. W. N. 57, 2 C. W. N. 290, 3 C. W. N. 760, 22 A. 100, but in warrant case a Magistrate can receive a complaint upon fresh evidence. 5 C. W. N. 169, 5 C. W. N. 457; 28 C. 652 F. B., 1 C. W. N. 49, 7 C. W. N. 527, 28 C. 211, 22 B. 711, 6 C. W. N. 633; 19 C. 726, 8 C. W. N. 456, 29 M. 126 F. B., 29 A. 7; 3 A. L. J. 502; A. W. N. 1906, 28 M. 310.

—fresh complaint may be instituted on the same facts before another M. provided the complainant informs the trying M. that he had already filed a similar complaint. 27 Bom. L. R. 352; 1925 Bom. 258; 87 I. C. 527; 26 Cr. L. J. 991, 22 A. 106, 36 A. 129, 2 P. L. J. 31, 1 P. L. T. 293, *contrn.* A Magistrate of co-ordinate authority cannot entertain a fresh complaint on the same facts or re-open the old complaint as if it was an appeal or a matter of revision. 22 A. 106.

—a complaint once dismissed cannot be reviewed by the successor-in-office of the Magistrate. 2 C. W. N. 290.

—when the previous complaint has been dismissed and the order of dismissal has been upheld by the S. J. no fresh complaint can be entertained, only remedy being to appeal to the H. C. for revision. 11 P. W. R. 1910 Cr., 5 Ind. C. 911 (68 P. L. R. 1912, 5 A. 36, 387, 28 C. 397) *Dis.*

—fresh complaint may be maintained on new facts which with due diligence could not have been brought forward on the prior occasion. 2 Bur. L. J. 228.

When the order of dismissal amounts to acquittal.

—when a complaint against a Municipal Chairman is dismissed under s. 203 Cr. P. C. on the ground that the previous sanction of the Local Govt. was not obtained, the order of dismissal did not amount to an acquittal. 1928 Mnd. 1158; 1928 M. W. N. 801.

S. 202. Prosecution under ss. 182 and 211 I. P. C.

under s. 211 I. P. C. this section or otherwise. 758, 4 C. W. N. 305, 6 C. W. N. 205, and in case of prosecution for false information to the police the complainant must have an opportunity to prove his case. 33 C. L. J. 10 C. W. N. 158; 2 C. L. J. 228; 15 A. 336, 22 B. 596, 7 M. 292, 14 C. 707 F. B. 37 C. 250. 14 C. W. N. 330; 10 C. L. J. 564, 5 Bur. L. T. 129; 13 Cr. L. J. 578; 15 Ind. C. 994

—dismissal of a complaint without examining the complainant in contravention of sec. 203 and prosecution of the complainant under s. 182 or s. 211 I. P. C. is illegal. 48 B. 360; 26 Bom. L. R. 183; 81 I. C. 608; 25 Cr. L. J. 960, 27 I. C. 921, 1912 P. R. 2.

Suit for malicious prosecution.

—suit for malicious prosecution will not lie against the complainant when the complaint is dismissed under this section. 25 M. L. J. 1, 8 Pat. 285; 10 Pat. L. T. 415; 1929 Pat. 271; 118 I. C. 133.

Notice.

—when a complaint was dismissed and the District Magistrate set aside the order of dismissal and ordered a retrial, no notice to the accused was necessary. 13 Cr. L. J. 46, 9 Ind. C. 277, A. W. N. 1907, 288, 4 A. L. J. 790, 6 Cr. L. J. 396, 29 C. 457; 6 C. W. N. 638, 5 A. L. J. 74; A. W. N. 1908, 45, 9 A. 52.

—a notice to a person against whom a complaint is made is quite unnecessary where it is sought to set aside the summary order in a proceeding to which he was no party. 10 A. L. J. 531; 35 A. 78; 14 Cr. L. J. 2.

—order of further inquiry into a complaint dismissed under s. 203 without notice to the accused, though not absolutely illegal is so unfair and prejudicial to the accused that it should not ordinarily be maintained. 44 P. W. R. 1911; 12 Cr. L. J. 615; 12 I. C. 991, 4 C. W. N. 100 *fol.*

Death of complainant, effect of.

—as there is no abatement of a criminal case on the death of the complainant, a fresh complaint on the same fact is not necessary but the old complaint must be treated as pending and proceeded with to its disposal. 16 Cr. L. J. 713 (Mad.)

Legality of final order before inquiry is complete.

—the Magistrate having elected to hold an inquiry cannot dismiss complaint after making inquiries from accused's pleader and looking into papers filed by defence before the police, but shall give the complainant opportunity to adduce evidence. 16 C. W. N. 143; 13 Ind. C. 781, 6 Bom. L. R. 91.

—where the M. distrusting the complaint directed investigation by the President of the Union Board under s. 202 Cr. P. C. and instead of waiting for the report issued summons against the

S. 202. Legality of final order before inquiry is complete —*contd.*

petitioner under s. 323 I. P. C. as he thought that the case could no longer be kept pending, held that the action of the M. was irregular and should be set aside. 41 C. L. J. 170 : 1925 Cal 989.

—dismissal of complaint without complying with ss. 200 or 202 is illegal. 30 C. 923 : 7 C. W. N. 523, 29 C. 410.

—dismissal of complaint after considering the result of police investigation is authorised by sec. 203, 6 Bom. L. R. 622; the Magistrate should not dismiss it on police report only when facts, if proved to be true, would make out a case. 24 C. W. N. 96 (note).

—order of dismissal of complaint based on the report of the master of the accused relating to matter personally observed by the Magistrate under this sec. is illegal. 10 C. W. N. 33 (note). 16 Cr. L. J. 30.

Illegal order.

—the order that "both parties are warned" is not legal. 23 C. W. N. 58 (note).

Appeal and Revision.

—an appellate court should not lightly set aside an order of dismissal unless it is clear that there has been miscarriage of justice. 86 I. C. 802 : 1925 Pat. 447 : 3 Pat. L. R. 33 : 26 Cr. L. J. 866.

—in a case in which a perfunctory inquiry is made by the Police and the report is also considered in a perfunctory manner by the M. the High Court will interfere in revision, otherwise not. 19 Cr. L. J. 263 : 4 P. L. W. 114.

—where the M. failed to keep the proceedings under s. 202 distinct from proceedings under s. 174 and dismissed the complaint to interfere when the complainant thereafter, held although there was the M. still the delay coupled with entered it undesirable to reopen the L. J. 26 : 1927 Lah. 30.

S. 203. (Dismissal of complaint)

Application of the section.

—s. 203 does not apply to application under s. 107 Cr. P. C. 25 Cr. L. J. 89 : 76 I. C. 25 : 1924 Pat. 630.

—the dismissal of a complaint by a Village Magistrate for default of appearance does not amount to a dismissal of a complaint under this sec. which does not apply to the proceeding before him. 1927 Mad. 695 : 28 Cr. L. J. 507 : 101 I. C. 891 : 53 M. L. J. 102.

Change effected by the amendment.

—the change in language in s. 203 is merely verbal and is not a change in substance and a court can still dismiss a complaint without directing an investigation under s. 202. 86 I. C. 985 : 26 Cr. L. J. 921 : 6 Pat. L. T. 727 : 1925 Pat. 704.

S. 203. Duty of Magistrate under this section.

—the Magistrate receiving complaint and examining the complainant must himself deal with it under s. 203 or 204 10 C. W. N. 1086.

—he cannot dismiss the complaint unless he has followed the procedure under ss 203 and 202. 9 C. W. N. 199, 30 C. 199, 30 C. 923 : 7 C. W. N. 525, 11 C. W. N. 318.

—the Magistrate need not at once consider the complaint, the complaint-petition and the examination on oath. 19 Cr L. J. 228 (Pat.)

—the motive of the complainant should not be looked to. 13 B. 590, 19 C. W. N. 1043.

Ground of dismissal of complaint, proper and improper.

—a complaint which discloses a crime should not be dismissed simply on the ground that a civil remedy is obtainable, 10 W. R. 40, or on the ground that a more responsible person should have complained, 18 W. R. 55 or on the ground that its entertainment would encourage hundreds of such complaints and would stir up old religious feelings of animosity between different communities, Ratanlal 562, or on the ground that the complainant had no personal knowledge of the alleged facts, Ratanlal 669, or on the ground that the evidence discloses an offence other than or in addition to that complained of, 8 W. R. 32, or on the ground that the complainant is a man of low caste and the alleged offence being theft of a goat is merely a harm under s. 95 I. P. C. 2 W. R. 35, or on the ground that the complainant is actuated by a malicious feeling and that if the act of the accused which was committed six years back would be held criminal, a large part of the population would be convicted. Ratanlal 549, or on the ground that the accused has been exonerated in a previous departmental enquiry. 1887 P. R. 33.

—the fact that besides the complainant some other persons could complain is no ground for dismissal. 97 I. C. 363 : 27 Cr. L. J. 1104 1927 All 69.

—Magistrate must record his reasons for dismissal of the complaint. 40 C. 41, 90 I. C. 158 : 26 Cr. L. J. 1502, 7 Pat. L. T. 481 : 1926 Pat. 57, 74 I. C. 855 : 24 Cr. L. J. 823, 2 Pat. L. T. 142, 21 M. L. J. 499 contra Violation of this rule renders the dismissal void.

—motive of the complainant cannot be the ground of dismissal. 13 B. 590.

—the fact that the complaint is made at the instigation of the complainant is not a ground for dismissal. 13 B. 590.

S. 203. Ground of dismissal of complaint, proper and improper—*contd.*

—the grounds for dismissing a complaint should be based on inference of facts arising from or disclosed by (1) the complaint, (2) the examination of the complainant and (3) the investigation, if any; anything outside it is extrajudicial and must be discarded. 9 Bom. L. R. 742.

Who can dismiss a complaint.

—the Magistrate who took the cognizance of the case or the Magistrate to whom it was transferred for local investigation can dismiss the complaint. 6 C. W. N. 843, 3 C. W. N. 490, the District Magistrate cannot pass such order without withdrawing the case to his file. 6 C. W. N. 843, 3 C. W. N. 430, 12 W. R. 53.

What amounts to dismissal.

—when the Magistrate refuses to issue process against some of the persons complained against it amounts to dismissal against those persons. 29 C. 457 : 6 C. W. N. 638, 20 Cr. L. J. 835.

—where a M. having jurisdiction to try a case bears evidence on both sides and then discharges the accused, it is tantamount to an acquittal. 75 I. C. 727 : 25 Cr. L. J. 39.

—where the M. called for a Police report and on consideration of that report ordered "enter mistake of law" and refused to issue processes, the order must be regarded as an order dismissing the complaint. 17 C. W. N. 451.

—an order directing withdrawal of process issued against the accused does not amount to an order of dismissal of complaint. 12 C. W. N. 68.

When dismissal amounts to acquittal.

—where the M. dismissed a complaint under this sec. against
 of previous sanction of the Local
 ' not amount to an acquittal. 1928
 52 M. 695 : 113 I. C. 625 : 30 Cr. L.

Fresh complaint in respect of the same offence.

—when a complaint has been dismissed by a Magistrate it is a well recognized and salutary rule of law that a M. of co-ordinate jurisdiction should not entertain a fresh complaint in respect of the same offence when it is based on facts which were previously known to the complainant and on evidence which was available when the first complaint was made. 1929 Sind 61 : 29 Cr. L. J. 1097 : 112 I. C. 681, 30 Cr. L. J. 444 : 115 I. C. 309.

Appeal and revision.

—where a M. dismisses a complaint under s. 203 Cr. P. C. the only order that the Sessions Judge can make in revision is to direct further inquiry and he cannot direct the M. to summon the accused. 1928 All. 684 : 116 I. C. 494 : 30 Cr. L. J. 631.

S. 203. Appeal and revision—contd.

—where a complaint under s. 395 I. P. C. was dismissed by the M. after considering the police report and the evidences of the complainant and his witnesses, an appellate court should not lightly set aside an order of dismissal but should do so only when it is clear that there has been miscarriage of justice. 3 Pat. L. R. 33: 1925 P. 447

—the High Court has power under s. 439 read with s. 423 Cr. P. C. to revise an order of discharge passed by all subordinate Magistrate and to direct further grounds for doing so irrespective C. 994, (15 C. 608, 26 C. 746, 28 C. 521 Ref. (27 C. 126, 6 C. L. J. 705, 33 C. 1264), discussed and diss from.

Charter of an
—either
in the
L. J.
705 Ref

Power to revive earlier proceeding.

—where a Magistrate dismisses a complaint, it is open to him at a later stage to issue summons and revive the proceeding notwithstanding the fact that the Session Judge has, in the meanwhile, in revision directed or refused to direct further inquiry. 1929 Pat. 469: 1929 Cr. C. 353: 8 Pat. 537: 10 Pat. L. T. 725.

S. 204. (Issue of process).

—wide discretion is given to the M. with respect to the grant or refusal of process, but this discretion is not unfettered. If a *prima facie* case is made he ought to issue process and he is not entitled to issue process merely because he thinks that it is unlikely that the proceedings will result in a conviction. When the facts alleged disclose an offence the M. cannot refuse to issue process simply because some other persons have been tried and acquitted upon the same charge and upon the same facts, though in issuing the process the M. should consider that fact. 53 C. 606: 30 C. W. N. 546: 95 I. C. 388: 44 C. L. J. 114: 1925 Cal. 795: 27 Cr. L. J. 788.

—the court must be satisfied before issuing a process that there is a case made out for issuing a process. 10 C. W. N. 1090, 18 Cr. L. J. 626 (c).

—the M. may first issue process against one and then change his mind and issue processes against all the accused. 1928 Lsh. 541: 29 Cr. L. J. 293: 107 I. C. 778.

—where on the complaint of a person who had no personal knowledge, judicial inquiry was directed and proceedings were taken on the report thereof, held that there was no proper plaint on which steps could be taken. 11 C. W. N. 170, 10 C. W. 775, 1090 Ref.

S. 204. (Issue of process)—*contd.*

—the Magistrate should exercise reasonable discretion as to whether a warrant or a summons should be issued, and the accused should not be subjected to the indignity of an arrest, unless there is real need for it. U. B. R. 1892-1893 Vol I. 31.

—refusal to issue any process amounts to discharge. 32 C. 783: 10 C. W. N. 1086, 4 C. W. N. 242.

—process is unnecessary when the accused voluntarily appears to answer the charge against him. Ratanlal 8.

—if no process is issued and the accused appears, the Magistrate should proceed but if no evidence is given the accused must be discharged. 26 B. 552.

—if there is reason from the examination of the complainant to issue process against all the accused, process must be issued against all the accused; it will be wrong to issue process against some. 4 C. W. N. 560.

—the provision of sec. 208 (3) Cr. P. C. must be read subject to the provisions of a. 204 (3). 110 I. C. 216: 29 Cr. L. J. 664: 1928 Oudh 226.

—when a M. had passed an order under this sec. and subsequently to that on the filing of a cross case rescinded the order and sent both the cases to a subordinate M. for local inquiry held that the M. had the power to reconsider the order of this kind on sufficient grounds. 39 C. L. J. 329: 77 I. C. 818: 1923 Cal 662: 27 C. W. N. 651.

—when two counter-complaints are made, the action of the Magistrate will not be illegal if he issues process in one case and postpones the issue of process in the counter-case until after the disposal of the other case. 3 Pat. L. T. 764.

—when the police report is true and the M. directs the case to be entered as such he cannot refuse to issue the process simply because there is no chance of conviction. 29 C. 410.

—when a Joint Magistrate who took the cognizance of a complaint, made over the case to a subordinate magistrate for disposal, the latter alone has the jurisdiction to deal with the application until the case is withdrawn from his file. 32 C. 783: 10 C. W. N. 1086.

—neglect to maintain a wife is not an offence; therefore
should not be
icant's failure
16 M. 234.

—s. 344 is applicable to cases even before the issue of process under s. 204 and the M. is entitled under a. 344, if there be a reasonable cause for doing so, to postpone any inquiry or trial and to postpone the issue of process under s. 204 even if the case be a warrant one. 6 Pat. L. J. 477: 3 Pat. L. R. 134: 88 I. C. 603.

S. 205. (Magistrate may dispense with personal attendance of accused).

—Form No. 1 in Sch. V. of the Cr. P. C. contemplates the appearance of an accused not necessarily in person but by pleader.

S. 205. (Magistrate may dispense with personal attendance of accused—*contd.*)

A M. can at the time of issuing the summons direct that the personal attendance of the accused should be dispensed with; he can do this also after the issue of summons. 50 B. 250 : 93 I. C. 232 : 1926 Bom. 218 28 Bom. L. R. 102.

—the omission by the Court to note upon the record that permission to appear by pleader has been given is a mere irregularity. 50 B. 250 : 93 I. C. 232 : 1926 Bom. 218.

—this sec. applies only to cases in which the M. has issued summons in the first instance. It does not apply to a case where the accused has been arrested without or after the issue of a warrant. 4 Pat. L. T. 648 : 2 Pat. 793 : 75 I. C. 72 24 Cr. L. J. 872.

—the section is applicable to both summons and warrant cases. 21 C. 588. 1908 P. W. R. 20.

—but when warrant is issued at the first instance personal appearance cannot be dispensed with. 18 Cr. L. J. 975, 2 Pat. 793 : 4 Pat. L. T. 648. 75 I. C. 72. 24 Cr. L. J. 872 1917 P. R. 36

—this sec. applies to all cases where a summons is issued in the first instance irrespective of the fact whether he appears in answer to the summons or has to be brought in by a warrant of arrest issued subsequently. 1930 N. 61 : 26 N. L. R. 50 : 1930 Cr. C. 149

—when the accused was ill, order for personal appearance was bad. 6 C. W. N. 59 (note).

—a M. has no jurisdiction to hear the above case in the absence of the accused even with the consent of the Mukhtar appointed by the M. for the accused *suo motu*. The defect cannot be cured by s. 537 Cr. P. C., 4 Pat. L. T. 648 2 Pat. 793 : 75 I. C. 72 : 24 Cr. L. J. 872

—appearance by pleader in a summons case does not render the accused liable to prosecution under s. 174 I. P. C. 27 C. 985 : 5 C. W. N. 131, 18 C. W. N. 31 (note) and the Magistrate cannot proceed *ex parte* and decide the case, 24 W. R. 25. If in such case personal attendance is required the M. should direct such appearance on a fixed date and in default may issue a warrant. 27 C. 985.

—s. 205 allows the accused to appear by pleader and such appearance dispenses with the necessity of the accused's acts which devolve upon him in answering the ex-
 or refusing to plead to
 Cr. L. J. 272 : 19 Ind. C.
 18. The court can not
 upon the plea of guilty given by the accused's agent or pleader. 50
 B. 250 : 93 I. C. 232 : 1926 Bom. 218 : 23 Bom. L. R. 702.

—*pardanashin* ladies should be allowed to appear by pleaders. 17 C. W. N. 1248 : 23 Ind. C. 489 : 15 Cr. L. J. 28, 6 A. 59, 21 C. 188. 21 C. W. N. 163 (note). 1908 P. W. R. 20, 1909 P. W. R. 5, but a *pardanashin* lady cannot, as of right, claim exemption from personal attendance in court. 5 A. 92.

S. 205. (Magistrate may dispense with personal attendance of accused)—*contd.*

—where a woman is admitted to be a *pardanashin* lady the privilege should not be denied to her on the ground that other ladies belonging to the same class that observed *parda* had appeared in court out of their own free will. 99 I. C. 126 : 28 Cr. L. J. 94 : 1927 All. 149.

—a recognizance-bond may be taken from the accused whose personal appearance is dispensed with. 5 Bom. H. C. R. Cr. 64.

—concession extended to the accused to appear by pleader should not be revoked without sufficient ground, specially in trivial cases. 38 C. L. J. 9 : 73 I. C. 150 : 24 Cr. L. J. 902.

—appearance by mother-in-law was held to be improper. *Ratanlal* 205 ; but in a trivial case the H. C. did not interfere, although the accused was represented by his father-in-law. *Ratanlal* 206.

S. 206. (Power to commit for trial).

—when the question of discharge or commitment is one of probability the accused should be committed. 26 A. 564, 9 C. W. N. 829

—where the evidence for the prosecution tends to show that an offence of murder has been committed the M. should better commit the accused than to weigh the evidences. 1929 Lah. 403 : 30 Cr. L. J. 234 : 114 I. C. 55 : 30 Punj. L. R. 35.

—connection with another case is no ground for commitment, 15 Bom. L. R. 998 : 2 Bom. Cr. C. 165 : 14 Cr. L. J. 657 : 21 Ind. C. 897.

—misjoinder does not affect commitment ; the S. J. may frame separate charges at trial. 26 M. 592

—commitment may be made in cases not exclusively triable by the Court of Session if the M. cannot adequately punish. 24 C. 429 : 4 Bom. L. R. 85, but in such cases the committing Magistrate must state the grounds in the order, in order to enable the H. C. to judge in revision whether proper discretion has been exercised. 11 Bom. L. R. 18, 8 S. L. R. 23

—If the case is triable by the M. and he can inflict adequate punishment, he cannot commit it to the sessions. 15 Bom. L. R. 998, 3 A. L. J. 14, 8 S. L. R. 23, 21 A. L. J. 420.

—where the M. has authority to commit but has no territorial jurisdiction in the place where the offence is committed, the irregularity can be cured by a 531 Cr. P. C. if no failure of justice has occasioned. 26 M. 640, 17 M. 402 *Contra*. 3 A. 251, 11 C. L. R. 55 : *Ratanlal* 922.

S. 207. (Procedure in inquiries preliminary to commitment).

—the Magistrate has discretion to commit when he is of opinion that the accused cannot be adequately punished by him. 11 A. L. J. 439 : 19 Ind. C. 960 : 14 Cr. L. J. 304, and the case ought to

S. 207. (Procedure in inquiries preliminary to commitment)—*contd.*

he tried by the Court of Sessions. The M. must give reasons for his opinion because the order of commitment is a judicial order. 1928 Pat. 551; 29 Cr. L. J. 612; 109 I. C. 804

—"ought to be tried" refers to cases which the M. is not competent to try or cases which in his opinion cannot be adequately punished by him. 4 Bom. L. R. 85, 5 Bur. L. T. 239; 6 L. B. R. 129, 13 Cr. L. J. 877; 17 Ind. C. 813, Rat. Uo. Cr. C. 577, 16 B. 580, 1886 A. W. N. 256, 20 Cr. L. J. 97 (Nag), 24 C. 429, 8 S. L. R. 23, 11 S. L. R. 79.

—a M. should not commit a case only on the ground that the accused had been committed in another case. 20 Cr. L. J. 97 (Nag).

—but incompetency of the M. to try the case or inability to pass adequate sentence is not the only ground for committal. He may commit for any other sufficient grounds. 1917 P. R. 13, 42 M. 83, 26 Cr. L. J. 1389; 1925 Rang. 207; 89 I. C. 525. The discretion vested on the Magistrate by this section cannot be limited by the provision of Ss. 254 of the Code. 26 Cr. L. J. 1389; 1925 Rang. 207; 89 I. C. 525.

S. 208. (Taking of evidence produced).

—Sub-sec. (1) enjoins that the complainant (if any) shall be heard, his examination is not necessary. 1929 Cal. 229; 118 I. C. 572; 30 Cr. L. J. 942.

—the Magistrate cannot commit without examining all the evidence adduced by the accused. 20 A. 264; A. W. N. 1898, 52, 21 A. L. J. 911, 26 A. 177; A. W. N. 1903, 215 *fol.* 36 C. 48; 12 C. W. N. 1014, 8 Cr. L. J. 221 *Dis.*, 36 M. 321; 23 M. L. J. 368; 13 M. L. J. 116; 1912 M. W. N. 1243 *Ref.*

—the accused as well as the complainant has the right to call upon the M. to compel the attendance of witnesses who have been summoned but failed to attend. 1 C. W. N. 548; 1906 A. W. N. 306.

—but Hindu ladies of respectability and secluded habits should not be compelled to attend. 3 W. R. 392.

—the committing M. must make a full and careful inquiry and record the whole evidence in the case even when the accused has made a confession, as confessions are in many cases retracted in the trial. Ratanlal 842. 1 A. L. B. R. 348, 11 A. L. J. 144.

—"the accused" includes the complainant. 1929, 6 Rang. 531:

and transferred to the Session Court can be used not only for purposes of corroboration or contradiction but for all purposes. 6 Lah. 199; 26 Panj. L. R. 361; 26 Cr. L. J. 1245.

—all the persons alleged or known to have knowledge of the facts must be examined by the prosecution. 10 C. 1070, 8 C. 121, 16 A. 84, 1 Pat. L. T. 161. If there is no apprehension that they will

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—the Magistrate cannot commit without examining all the evidence adduced by the accused. 20 A. 264 : A. W. N. 1898, 52, 21 A. L. J. 911, 26 A. 177 : A. W. N. 1903, 215 fol. 36 C. 48 : 12 C. W. N. 1014, 8 Cr. L. J. 221 Dis., 36 M. 321 : 23 M. L. J. 368 : 13 M. L. J. 116 : 1912 M. W. N. 1243 Ref.

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.. .. . cases retracted in
J. 144.

.. .. . location of all the
129, 6 Rang. 531 :

.. .. . and transferred
poses of corrobor-
6 Lah. 199 : 26

.. .. . knowledge of the
1070, 8 C. 121.
.. .. . on that they will

S. 208. (Taking of evidence produced)—*contd.*

not speak the truth. 8 C. 121, 16 C. 245, 14 A. 521, 15 A. 6, 16 A. 84. If all the witnesses are not called for by the prosecution without sufficient reason the court may properly draw an adverse inference. 8 C. 121, but no such inference can be drawn against the accused for non-production of his witness. 8 C. 21, 21 C. W. N. 1152.

—in committal proceedings the prosecution need not get recorded every jot of evidence. 1930 Sind. 99: 31 Cr. L. J. 117: 120 I. C. 520. 1930 Cr. C. 282.

—after the issue of summons the M. may decline to send for and examine the witnesses on representation of the complainant that they are cited for causing vexation 1928 Mad. 652: 29 Cr. L. J. 725 110 I. C. 581.

—a Magistrate cannot curtail the cross-examination, 10 A. L. J. 144 13 Cr. L. J. 443, he may himself cross-examine the prosecution witnesses. 17 Bom. L. R. 910.

—application by the accused for summoning witnesses and filing documents on the date of passing order may be rejected. 19 C. W. N. 335: 42 C. 608, 16 Cr. L. J. 415: 28 Ind. C. 799, 20 A. 264 Apr. 26 A. 177 *Expl.*, 36 C. 48: 12 C. W. N. 1014, 36 M. 321: 23 M. L. J. 368 13 Cr. L. J. 778 *Ref.*

—where the accused did not cross-examine the prosecution witnesses immediately after the examination-in-chief, but applied to the M. after the close of the prosecution, to cross-examine them and to examine defence witnesses, held that the M. was justified under s. 347 in committing the case without the cross-examination of the prosecution witnesses and the examination of the witness for the defence. 36 C. 48, (Ratanlal 975, 20 All. 264, 26 A. 177) *Diss.* 21 C. 642 *Diss.* See also 33 C. W. N. 535. 1929 Cal. 593: 1929 Cr. C. 222: 119 I. C. 808.

the accused has not the right to require the cross-examina-

885 and before the drawing up of charge the accused has the right to cross-examine. 5 C. W. N. 110, 10 A. L. J. 144, 21 C. 642, this right cannot be overlooked. 51 C. 442.

—where the case was at first begun as a warrant case and the accused reserved cross-examination but after hearing the prosecution evidence the M. came to the conclusion that the case was "it to have the witnesses re-examined" was prejudiced by the sudden

Evidence Act a witness will be examined-in-chief, cross-examined and re-examined. There is no

S. 208. (Taking of evidence produced)—*contd.*

express provision for postponing the cross-examination of witnesses till all the prosecution witnesses are examined-in-chief. Special provisions with respect to trials in warrant-cases have been made entitling the accused to postpone the cross-examination till certain stage. But no such provision has been made with respect to enquiries in cases under Chap. XVIII of the Code. The M. has, however, the discretion to allow the accused to postpone the cross-examination of witnesses in suitable circumstance. But he cannot throw any obstacle in the exercise of the liberty by an accused to cross-examine the witnesses for the prosecution where the accused postponed cross-examination of witnesses in order to have the copies of their statements before the police which the M. thought they were entitled to, the M. could not refuse the accused to cross-examine the witnesses after such copies were furnished 6 Pat. 329 : 8 Pat. L. T. 780 : 103 I. C. 597 : 28 Cr. L. J. 709 1927 Pat. 243.

—the committing M. must not encroach upon the functions of the jury 14 M. L. T. 200 : 1923 M. W. N. 728 14 Cr. L. J. 529, 11 B. 372, 27 B. 84, 9 C. W. N. 829, 9 Bom. L. R. 225 *Ref.*, it is his duty to be satisfied whether there are fair grounds for concluding that the accused is guilty, *same case*.

—in case of failure to take defence evidence the whole procedure becomes illegal. 46 A. 137 : 21 A. L. J. 911.

—but the committing M. may refuse to summon and examine witnesses for the accused, if he thinks it unnecessary for reasons to be recorded. 36 M. 321 : 23 M. L. J. 368. 1912 M. W. N. 1243 : 13 M. L. T. 116. 13 Cr. L. J. 778, 3 A. 392 Recording reasons of refusal is imperative 24 L. W. 713 : 98 I. C. 399 : 1927 Mad. 162.

—where a M. fails to issue processes on the defence witness and records his reasons for so doing, the case falls under s. 208 (3) and there is no illegality 103 I. C. 597 : 28 Cr. L. J. 709 : 1927 Pat. 243 : 6 Pat. 329 : 8 Pat. L. T. 780.

—when the commitment was made under the direction of the S. J. before the examination of the defence witnesses it was quashed. A. W. N. 1906. 306 : 4 A. L. J. 41 : 4 Cr. L. J. 451.

—an accused cannot be committed on evidence taken in his absence. 2 Weir 259.

—after commitment the S. C. cannot remand a case for cross-examination of the witnesses. 2 Weir 260.

—the court should not put questions in examination of witnesses unless the pleaders have omitted to put 6 C. 279 : 7 C. L. R. 385.

—a S. J. has jurisdiction to try a case which has been committed for trial to him, and if the trial is legally held an irregularity in the commitment will not vitiate the trial. 42 C. L. J. 114.

: —It is too late to object to the commitment after the accused has pleaded to the charge before the S. J., 42 C. L. J. 114.

—what the enquiring Magistrate has got to try and determine is not whether the case has been made out but only whether there

S. 208. (Taking of evidence produced)—contd.

is a case for trial. There is always a case for trial when the evidence is of such a nature that the guilt of the accused can be held to be proved or disproved only as the result of the valuing and weighing of the evidence. 49 M. L. J. 155.

Quære, whether the words "complainant" in the section apply to the person who laid the first information report. 42 O. L. J. 114. 20 I. C. 440. 26 Cr. L. J. 60; 1926 Cal. 410.

—evidence recorded under s. 208 Cr. P. C. after it had been filed as an exhibit in the case without objection on the part of the accused should not be removed from the record. 1930 Cr. C. 70.

Appeal and Revision.

—an order of discharge does not amount to an acquittal and the superior court may order further inquiry under s. 437 or commitment under s. 436 Cr. P. C., 28 C. 397; 5 C. W. N. 575, 20 C. 633, 10 C. W. N. 319, 10 B. 319, 27 B. 84, 23 M. 225, 24 M. 136.

—when order for further inquiry is made, notice should be given to the accused. 28 A. W. N. 45, 11 C. W. N. 316.

—the H. C. has the power of revision in case of order of commitment by the S. J., after order of discharge by the M. 7 C. W. N. 327, 12 C. W. N. 177; 6 C. L. J. 760, 30 M. 224.

—the H. C. will not interfere in revision with an order of the Dt. M. setting aside in revision an order of discharge of the Inquiring Magistrate unless the order of the Dt. M. is clearly wrong. 49 M. L. J. 155; 48 M. 74; 90 I. C. 530; 1925 Mad. 1061; 26 Cr. L. J. 1570.

—a Dt. M. ought not in revision filed against an order of discharge, set it aside against accused who have not been made parties to the revision and who have not had an opportunity to show cause against the order being set aside. 49 M. L. J. 155; 48 M. 874; 90 I. C. 530; 1925 Mad. 1061; 26 Cr. L. J. 1570.

—the H. C. will not interfere unless the reason recorded by the M. for his refusal to issue process appears on the face of it to be illegal or untenable. 31 Bom. L. R. 523; 1929 Bom. 269; 30 Cr. L. J. 1066; 119 I. C. 667.

S. 209. (When accused person is to be discharged),

"He has, if necessary, examined the accused".

—this section and s. 342 are the only sections authorising the examination of the accused. 2 C. W. N. 702.

—the committing magistrate is bound to examine the accused for the purpose of enabling him to explain any circumstances appearing in the evidence against him. 2 Weir 253, 23 M. 636, 17 Bom. L. R. 910, 6 C. 96, and the accused should be examined as accused and not as witness. 17 Bom. L. R. 910.

—if the accused is committed without such examination, the commitment should be quashed if it occasions a failure of justice. 23 M. 636, but such examination is necessary only when the prosecution evidence has disclosed circumstances against the accused and if the

S. 209. "He has, if necessary, examined the accused"
—*confd.*

M. is satisfied that such evidence does not disclose any proper subject of criminal charge he should not examine him. 1 B L. R. 16.

—it has also been held that if the accused wishes to make a statement the court cannot disallow him. 10 C. L. R. 54.

—the court cannot cross-examine the accused 25 W. R. 57, 8 W. R. 47 F. B., 1 C. L. R. 436, 6 C. L. R. 431, 6 C. 96, 279, 5 A. 353, 2 C. W. N. 702, nor can the court examine the accused for the purpose of filling up the gaps 26 C. 49, 3 C. W. N. 36, or for incriminating him 2 C. W. N. 702 1 C. L. R. 436, 10 M. 295, 6 C. L. R. 431, 1. M. H. R. 199.

—the examination should not be in a manner of examination of an adverse witness by the counsel and the accused should not be forced to convict himself by answering to a series of searching questions, the exact effect of which may not be comprehended by him. 6 C. 96.

Sufficient grounds for committal.

—except in a case where the charge is found to be groundless when the evidence is such that no tribunal, Judge or jury would even convict the accused on the evidence in the record, the M. is bound to commit for trial. The enquiring M. is not to determine whether

—it is not necessary that the M. should satisfy himself fully of the guilt of the accused before making a commitment. 148 P. L. R. 1903 : 11 B. 372, 27 B. 84 *fol.*, 99 I. C. 328 : 28 Cr. L. J. 120 : 1927 Mad 277.

—the only question he has to decide is whether there are sufficient grounds for committing the accused for trial, 26 A. 564, whether there is evidence on which a conviction is possible to law. 27 B. 84, 1927 Mad 277, 99 I. C. 328 : 28 Cr. L. J. 120

—the expression "sufficient grounds for commitment" does not mean sufficient grounds of conviction, but evidence which is sufficient to put the accused on his trial and such a case arises when credible witnesses make statements which if believed would sustain a conviction. Katanlal 319, 11 B. 372, 1908 P. R. 14 *contra.* the expression should be understood in a wider sense so as to indicate such evidence as would justify a conviction. 5 A. 161.

—lengthy cross-examination of the witnesses should not be allowed. 1929 Sind 137 : 1929 Cr. C. 337 : 30 Cr. L. J. 845 : 117 I. C. 773.

—where the M. entertains any real doubt as to the weight or quality of the evidence, the accused should be committed. 12 Bom. L. R. 923 : 8 Ind. C. 631, 11 B. 392, 9 Bom. L. R. 225, 5 A. 161 *Ref.* 23 C. W. N. 1031, 35 B. 163.

S. 209. Sufficient grounds for committal—contd.

—the M. has discretion and power to weigh the evidence to see if the case is a fit one for the jury to decide or whether it clearly points to their being no *prima facie* case for the accused to meet. 42 M. L. J. 49, 4 Rang. 471 : 99 I. C. 1019 : 1927 Rang. 74.

—if a *prima facie* case is made, the M. should clearly leave it to the jury at the sessions in form their own view as to their credibility of the evidence and if he finds that the evidence is not trustworthy and that a conviction will not result, he is entitled to record a finding to that effect. 28 C. W. N. 587 : 51 C. 849, 81 I. C. 913 : 25 Cr. L. J. 1089 1924 Cal. 639, 4 Lah. 69, 11 Cr. L. J. 751, 1910 P. L. R. 215, 15 M. 39 14 M. L. T. 200, 184 A. L. J. 232.

—where the question of discharge or commitment turns on probabilities the M. should leave the decision to the Sessions Judge and should not order a discharge on the improbabilities of the case, by giving the benefit of doubt to the accused. 49 A. 443 : 28 Cr. L. J. 281 109 I. C. 361 : 1927 All. 279 : 25 A. L. J. 191, 26 A. 564, 11 Bom. 372, 35 B. 163, 18 A. L. J. 232, 11 B. 372, 14 W. R. 16, 99 I. C. 1019 : 28 Cr. L. J. 219 : 1927 Rang. 74.

—when the M. entertains doubt he should commit. 35 B. 163, 23 I. C. 74 (M), 28 I. C. 643 : 1915 M. W. N. 243, 26 I. C. 309 (C), 31 I. C. 347, 37 A. 355, 30 C. L. J. 132, 54 I. C. 58, 23 C. W. N. 1031, 54 I. C. 413 (A), 18 A. L. J. 232, 54 I. C. 986 (Pat).

—the M. should exercise his discretion and after weighing the evidence decide whether or not he should try the case himself. 37 C. L. J. 34.

—it is his duty to make some investigation into the truth of the prosecution before committing the case. It is not sufficient for him to say that a *prima facie* case had been made out and thus relieve himself of further responsibility. 90 I. C. 661 : 26 Cr. L. J. 1589 : 1926 Pat. 5

When accused is to be discharged.

—except in a case where the charge is found to be groundless *i. e.*, where the evidence is such that no tribunal, Judge or jury would ever convict the accused on the evidence in the record, the M. is bound to commit for trial. The enquiring M. is not to determine whether the case has been made out but only whether there is a case for trial. It is a case for trial when the evidence is of such a nature that guilt of the accused can be held to be proved or disproved only as the result of the valuing and weighing of the evidence. 48 M. 874 : 99 I. C. 530 : 26 Cr. L. J. 1570 : 1925 Mad. 1061.

—where in a charge triable by a Sessions Judge, the M. who heard the case is of opinion that there is no foundation for a prosecution he is bound to discharge him after recording his reasons. 46 A. 537 : 81 I. C. 315.

—the Magistrate can weigh evidence and discharge the accused even if there be eye-witness whom he disbelieves. 5 A. 161, 21 A. 265, 26 A. 564, 12 C. W. N. 117, 1 Pat. L. T. 153 : 1912 M. W. N. 326, 99 I. C. 1019 : 28 Cr. L. J. 219 : 1927 Rang. 74.

S. 209. When accused is to be discharged—contd.

—if there is a mere scintilla of evidence against the accused he should not be committed. 9 C. W. N. 829, 28 C. W. N. 587, 51 C. 849.

—a Magistrate is bound to discharge an accused if he believes that he has committed no offence. 16 Cr. L. J. 5; 26 Ind. C. 309.

—when no *prima facie* case has been made out the accused shall be discharged. 15 M. 39 and even if *prima facie* case is made out the accused shall be discharged when the M. is satisfied that the charge is without foundation. 46 A. 537, 1904 A. W. N. 5 Dis.

—when the prosecution witnesses are unworthy of credit and should be discharged. 105, 26 A. 564, 9 C. W. N. 77, 15 Cr. L. J. 373; 23 Ind. C. 741, 12 C. W. N. 117, 16 Cr. L. J. 747, 7 C. W. N. 77, 15 Cr. L. J. 373 (Mad). 42 M. L. J. 49, 4 Leh. 69, 23 Cr. L. J. 601 (Lah) 1922 M. W. N. 326, 44 A. 57, 1 P. L. T. 153, 46 A. 537, 15 S. L. R. 1, 1917 U. B. R. 3rd Qr. 29, 5 A. 161

—when the M. finds that the prosecution witnesses are totally unworthy of credit it is his duty to discharge the accused. 92 I. C. 450 27 Cr. L. J. 274.

—when the M. comes to the conclusion that the prosecution witnesses are totally untrustworthy and that there is no reasonable possibility of the case resulting in a conviction it is his duty to discharge the accused. 91 I. C. 34; 1925 A.H. 670 27 Cr. L. J. 2; 24 A. L. J. 133

—the M. may discharge the accused if the complainant is absent and there is no evidence against the accused and the case is not one in which the M. ought to adjourn the inquiry. 15 W. R. 53.

Trial by the Magistrate himself.

—a M. cannot proceed under the latter part of sub-s. (1) until he has 'discharged' the accused under the former part. 24 M. 136; 2 Weir 544

—if the Magistrate is satisfied with the evidence to prove a lesser offence, he takes cognizance of it. 10 C. 85. 13 B. 502, 24

—when the accused is charged with an offence triable exclusively by the S. J. and there is some evidence to support the story the Magistrate should commit the accused and should not convict him for minor offences. 23 C. W. N. 1031, 13 B. 502, 1910 M. W. N. 852; 9 M. L. T. 71

Preliminary enquiry.

—preliminary inquiry in a case triable by a Court of Sessions is not without jurisdiction. 76 I. C. 702; 25 Cr. L. J. 238; 1925 Pat. 279; 6 Pat. L. T. 146.

S. 209. Recording reasons for discharge.

—the M. should record reasons for discharging the accused but if he fails to do that it cannot be said that the order of discharge is illegal. 4 L. B. R. 362, and he should only record the reasons for discharge and not a judgment. 40 A. 615.

Effect of discharge.

—such discharge order is no bar to the accused being apprehended and brought before the M. with a view to his commitment. 8 W. R. 61, 10 B. 319.

—the Dt. M. or Sessions Judge directing further inquiry or commitment should consider all the grounds upon which the order of discharge has been passed. 7 O. W. N. 77.

—an order of discharge does not amount to an acquittal and the superior court may order further inquiry under s. 437 or commitment under s. 436 Cr. P. C., 28 C. 397; 5 C. W. N. 575, 20 C. 633, 10 C. W. N. 319, 10 B. 319, 27 B. 84, 23 M. 225, 24 M. 136.

—when the accused person is discharged under this section no compensation should be allowed to him on the ground of the charge being veracious. Ratanlal Unreported, 961.

Appeal and revision

—an order of discharge does not amount to an order of acquittal and the superior court may order further enquiry under s. 437 or commitment under s. 436 Cr. P. C. 28 C. 397; 5 C. W. N. 575, 20 C. 633, 10 C. W. N. 319, 10 B. 319, 27 B. 84, 23 M. 225, 24 M. 138.

—when order for further inquiry is made, notice should be given to the accused 28 A. W. N. 45, 11 C. W. N. 316.

—the H. C. has the power of revision in case of order of commitment by the S. J. after order of discharge by the H. C. 7 C. W. N. 327, 12 C. W. N. 177. 6 C. L. J. 760, 30 M. 224

—the H. C. will not interfere in revision with an order of the Dt. M. setting aside in revision an order of discharge of the inquiring M. unless the order of the Dt. M. is clearly wrong. 49 M. L. J. 155; 48 M. 874; 99 I. C. 530. 1925 Mad 1061. 26 Cr. L. J. 1570.

—committing Magistrate's order refusing commitment to the Sessions is an order of discharge and not an acquittal and the Dt. M. has power under s. 437 Cr. P. C. to commit the accused before the Court of Sessions and the H. C. in revision ought not to interfere. 82 I. C. 760; 1925 S. 190; 19 S. L. R. 353.

—the Dt. M. ought not in revision filed against an order of discharge set it aside against accused who have not been made parties to the revision and who have not had an opportunity to show cause against the order being set aside. 48 M. 874; 49 M. L. J. 155; 90 I. C. 530; 1925 Mad. 1061; 26 Cr. L. J. 1570.

S. 210. (When charge is to be framed).

—a commitment without taking any evidence on a preliminary inquiry is illegal and ought to be quashed. Rat. Un. Cr. 100.

S. 210. (When charge is to be framed)—contd

—before committing an accused person the M. has to consider whether there are sufficient grounds for committing the accused 7. C. W. N 77, 12 C. W. N 117: 9 C. L. J. 760: 6 Cr. L. J. 406, 14 P. R. 1908 Cr.: 30 P. W. R. 1908, 3 A. 37, 11 B. 372.

—commitment in doubtful cases on the ground of case being a serious one is illegal 35 P. R. 1878 Cr.

—the discretion in s. 347 to "stop further proceedings" does not justify a Magistrate in disregarding the directions in s. 208 to 210 23 M. L. J. 368: 1912 M. W. N 1243: 13 M. L. T. 116: 36 M. 321, 20 B. 394, 26 A. 177 *Ref.*

—an accused can cross-examine the witness for the prosecution before commitment. 21 C. 642.

—"sufficient ground for committing" is not defined but it is manifest that they are not identical with grounds for convicting. 11 B. 372: 148 P. L. R. 1903 35 B. 163 12 Bom. L. R. 923, 155 P. L. R. 1909, 14 M. L. J. 200.

See other cases under s. 209

—If a case is transferred from the court of one Magistrate to that of another the latter can commit the case to the sessions, acting upon the evidence recorded by the former 36 A. 315.

—when two persons are jointly tried one of whom is triable by the Sessions Court, the proper course is to commit all of them to the sessions and not to try the other himself. 1 Welr 448, 22 Cr. L. J. 480 (c).

—the framing of charge does not amount to an order of commitment and after the charge is framed the M. does not become *functus officio*; he can amend the charge or can proceed with the case himself or can consider if he ought to commit or not 12 Bom. L. R. 521, but when the order of commitment is passed under s. 213 the M. cannot proceed any further with the case 12 Bom. L. R. 521.

S. 211. (List of witnesses for defence of trial).

—the Magistrate is bound under this sec. to require the accused to give a list of witnesses he desires to call. 7 Bom. L. R. 723: 2 Cr. L. J. 601.

—ordinarily it is incumbent on the accused to put in his list of witnesses on the day when the order of commitment is made, if he does not do so the Magistrate will have a discretion to allow or not to allow any such application subsequently made. If however such application is allowed then whether it is made under sub-sec. (1) or sub-sec. (2) will be governed by the same principle. 1930 Cal. 188: 1930 Cr. C. 145.

—if the accused declines to give in a list of witnesses he cannot compel the M. after committal to issue any summons for witnesses on his behalf. 19 A. 502: A. W. N 1897, 134, 14 A. 242, 12 A. L. J. 15: 14 Cr. L. J. 682, neither the S. J. would be bound to summon the witnesses unless they were material. 19 A. 502: A. W. N. 1897, 134.

S. 211. (List of witnesses for defence of trial)—contd

—if the M. commits an accused person to sessions without asking him if he wishes to have any witnesses to be summoned on his behalf the omission may be cured afterwards. 2 W. R. 50.

—summons cannot be refused simply because the number of witnesses is large, 11 C. 762, or on the ground that the M. entertains doubts as to the value of their evidence 15 W. R. 15, or because the witnesses are implicated in the offence with which the accused is charged. 15 W. R. 7

—on receipt of the list of witnesses the M. is to exercise his discretion and state distinctly whether he would summon the witnesses or not. When he finds that the witnesses were cited for the purpose of vexation, delay or defeating the ends of justice, he ought to proceed under s. 216, 16 W. R. 14.

—the accused is entitled before the committing M. to refuse to disclose the names of the witnesses he wishes to call at the trial and the M. cannot force him to disclose their names or the nature of the evidence they would be called upon to give. 14 A. 242.

S. 212. (Power of M. to examine such witness.)

—where the accused reserves his defence the committing M. is not precluded from exercising his discretion under this section and from summoning and examining the witness for the defence 18 A. 350 · A W N. 1876, 114

—the committing M. has power to hold an inquiry in a case exclusively triable by the S. J. and to weigh the evidence. 215 P. L. R. 1910; 8 Ind. C. 1044, 10 P. R. 1909; 24 P. L. R. 1909; 27 B. 84, 107 P. L. R. 1908; 14 P. R. 1908.

—the discretion given to a M. to commit a case to the Sessions under s. 347 is neither restricted nor taken away merely because he issues summons to defence witnesses under this section and examines them. 15 Cr L. J. 704; 26 Ind. C. 252, 12 C. W. N. 1014, *fol.* 20 A. 264; A. W. N. 1894, 52, 26 A. 177 *Dis.*

—the Sessions Judge cannot interfere with the discretion of the Magistrate. 1906 A. W. N. 306.

S. 213. (Order of commitment).

—where charges exclusively triable by a Court of Sessions are brought before a M. he should exercise his discretion and after weighing the evidence decide whether or not he should try the case himself. 37 O. L. J. 34; 73 I. C. 770; 1923 Cal. 108.

—if a M. hearing a charge triable by the court of sessions comes to the conclusion that the evidence before him is totally untrustworthy and that there is no reasonable possibility of the case resulting in conviction, he is entitled to and it is his duty to discharge the accused under s. 209 Cr. P. C. The same result will

S. 213. (Order of commitment)—*contd.*

follow if he comes to a similar conclusion after framing a charge and hearing witnesses for the defence under s. 213 (2). 91 I. C 34: 27 Cr. L. J. 2. 1925 All 670

—the words "witness for the defence" in sub-sec. 2 are wide enough to cover evidence extracted by cross-examination from the witness for the prosecution and therefore it is open to a M. to allow the accused to cross-examine the witness for the prosecution after the drawing up of the charge, and as a result of that to cancel the charge. 10 C. W. N. 1155-39 C. 885: 17 Ind. C. 406: 13 Cr. L. J. 774, 5 C. W. N. 110, 112 *contra*. It has been recently held by the same H. C. that the expression "witness for the defence" does not include prosecution witness. 33 C. W. N. 535: 1929 Cal. 593: 119 L. C. 803 1929 Cr. C. 222.

—it is illegal to commit an accused in his absence. 5 C. W.
N. 110

—this section gives the committing M. power to cancel a charge when he has heard witnesses for the defence. 2 L. B. R. 140, 11 B 372 *Ref*

—both parties cannot be committed for trial together upon joint charges as if they had one common object. 8 W. R. Cr. 47, 14 C. 358, 20 C. 537, 8 O. W. N. 18.

—in case of joint charge against several persons it is convenient to commit all instead of some. 2 Weir 258, Weir 448.

—it is erroneous to include several persons in one joint trial. 5 A. 17. 8 C. W. N. 180. 5 C. W. N. 866. 6 W. R. 65 F. B. 8 W. R. 47.

—a commitment should not be set aside as illegal, because all the accused were jointly committed. The section relating to joinder of charges and the Privy Council ruling reported in 27 Mad. 61 refer to trials only and not to commitments. 26 M. 592, 7 Bom L. R. 457, 1900 A. W. N. 206. After such commitment the S. J. should frame separate charges and try the accused separately. 26 M. 592

—if after committal to the sessions the graver charges

...and the fact that the *in vitro* and *in vivo* results are in good agreement.

—when the case is triable by the M. also, reasons for commitment must be stated. 15 Bom. L. R. 999; 2 Bom. Cr. C. 166; 38 B. 114.

jurisdiction to try the
563 : 1912 M. W. N.
455.

—commitment cannot be quashed on the ground of want of sanction. 20 Cr. L. J. 514

—a M. can commit cases triable by himself only if he considers that the accused cannot be adequately punished by him. 24 O. 428; 1 O. W. N. 414.

S. 213. (Order of commitment)—*contd.*

—the M. has the discretion to commit and the H. C. cannot interfere except in point of law. 11 A. L. J. 439: 14 Cr. L. J. 304: 19 Ind C 960.

—but this discretion is to be carefully exercised and wherever there is a point of law that different magistrates take different views of the evidence, the H. C. must itself not think the evidence sufficient to commit it to the Sessions Court. 1 Cr. L. J. 2: 24 A. L. J. 133, 40 A. 625, *not fol.*, 1922 All. 168 *fol.*

—s. 213 uses the expression "not sufficient grounds for committing the accused" which is quite different from such expression as "the case not proved" or "the accused are innocent." 1925 All. 670 L. R., 6 A. 185, 40 A. 625 *not fol.*, 1922 All. 168 *fol.*

—the D. M. or the S. J. may cancel the order of discharge and direct the accused under s. 436, Cr. P. C. to be committed and that order is subject to the revisional power of the H. C. 7 C. W. N. 327.

—acquittal of the accused by the M. does not preclude subsequent trial by the S. C. under sec. not triable by the M. though the offence is constituted by the same facts. 7 P. R. 1912 Cr., 39 P. W. R. 1912 Cr.: 243 P. L. R. 1912, 5 B. L. R. 125 *fol.*, 20 C. 633 *Dis*

—when the commitment of the European British subject is quashed, the commitment of the accused with him who is not a European British subject must also be quashed. 9 B. 285.

—the Coroner in Calcutta and Bombay has power to commit to the H. C. but that does not oust the jurisdiction of the P. M. 7 C. W. N. 889: 31 C. L. 16 B. 159.

S. 214. (Persons charged outside Presidency Towns jointly with European British subject). (Repealed).

S. 215. (Quashing commitment under s. 213).

—under this sec. the H. C. can interfere only on point of law and this section does not deal with commitments made by the D. M. or S. J. under s. 436, (now s. 437). 31 C. L. 7 C. W. N. 327, 27 M. 54, 15 A. L. J. 756.

—this sec. is a negative and restrictive one. It negatives the power of the S. J. to quash a commitment and restricts the H. C. to cases in which it can be said that the commitment is bad in law. 1929 Cal. 756: 1929 Cr. C. 468: F. B. 34 C. W. N. 13 F. B.

—a commitment order can be quashed only on a point of law. 7 Bur. L. T. 26: 15 Cr. L. J. 270: 15 A. L. J. 756.

—a commitment can be quashed only on a point of law and not on the ground that there is no evidence on the record of the committing M. to sustain the charge. 87 I. C. 965: 26 Cr. L. J. 1045: 1925 Nag. 409, 49 A. 181: 1927 All. 90: 21 A. L. J. 1050.

—but it has been held by the Punjab H. C. that the absence of evidence is a question of law and not of fact and can form the basis of an order for the quashing of a committal order. 31 Punj. L. R. 348.

S. 215. (Quashing commitment under s. 213)—*contd.*

—the quashing of a commitment upon a point of law is justified where the allegations for the prosecution if proved by evidence are not sufficient to constitute an offence. 28 Cr. L. J. 137 : 3 O. W. N. 308 : 99 I. G. 345

—where the M. says that although he has some doubts about the evidence he thinks it better that the case should be tried by jury, it cannot be said that in doing so he committed an error of law justifying the H. C. in quashing the commitment. 1928 Bom. 220 : 30 Bom. L. R. 639. 112 I C 107

question of law but a
 ice to the H. C. on the
 evidence, it was bad.
 10 Pat. L. T. 101.

—it is doubtful whether the criminal Appellate Bench of the H. C. has jurisdiction to quash a commitment made to the H. C. for trial. See *State v. Bhat*, 36 C. 48 but see *State v. Bhat*, 1 civil side of the H. C. 43 M. 361.

—it has been recently held by the Full Bench of the Calcutta H. C. that a commitment may be quashed by the H. C. under this section but this refers to its appellate or revisional jurisdiction. A Judge exercising original criminal jurisdiction cannot quash a complaint on the ground that it is illegal. 43 C. L. J. 311; 30 C. W. N. 276; 50 C. 350; 93 I. C. 33; 1926 Cal 470 F. B.

—a Judge of the H. C. sitting in Sessions can under s. 215 Cr. P. C. quash a commitment. 56 C. 785; 1929 Cal. 777; 1929 Cr. C. 521 affirmed by the Full Bench in 34 C. W. N. 13; 1929 Cal. 756. 1929 Cr. C. 468 F. B.

—if the commitment is without legal sanction the S. C. can refer it to the H. C. to quash it. 16 M. 468, 12 M. 35.

—only the H C has the power to quash a commitment. 4 A. 150, 16 M L J. 525, 1 W. R. Cr. 8, 2 Weir 262, 2 W. R. 57.

—when there is evidence to justify a commitment it is not open to the H. C. to quash it. 27 M. L. J. 593, 2 C. L. J. 46, 13 Bom. L. R. 20.

—an inquisition drawn up by a coroner has the effect of a valid commitment to the H. C. in its original criminal jurisdiction when the H. C. accepts the inquisition and the H. C. officers draw up charges in accordance with the same. 7 C. W. N. 889; 31 C. 1.

—a commitment without jurisdiction is void. 11 C. L. R. 55, but such commitment may be accepted if the accused is not prejudiced. 9 B. 100.

—when the Magistrate can adequately deal with the offence

S. 215. (Quashing commitment under s. 213)—contd.

—where during the commitment-proceeding and at the trial in case of majority of witnesses the provisions of s. 360 Cr. P. C., were not observed and the Public Prosecutor asked for *de novo* trial and the S. J. recommended the commitment to be quashed, held under the circumstance of the case (some of the accused remaining in the *hajat* for about a year and a half) the commitment should not be quashed. 29 C. W. N. 698; 88 I. C. 1052; 1925 Cal. 928; 26 Cr. L. J. 1276

—this sec. applies to actual commitment and not to a direction to commit under s. 436 Cr. P. C. 30 M. 224

—the accused cannot be discharged by the Magistrate after the order of commitment, only the H. C. can quash it. 4 A. 150.

—the H. C. can quash a commitment at any stage. 6 C. 584.

—a commitment should not be set aside merely for the fact that after the committal to the Sessions the graver charge against the accused have been withdrawn leaving only the minor charges triable by the Magistrate. 31 C. W. N. 144; 1927 Cal. 199; 99 I. C. 349; 28 Cr. L. J. 141.

—the H. C. will not ordinarily interfere with an order of commitment unless it finds an illegality in the order. The test is whether the Magistrate's findings on the evidence are capable *prima facie* of standing the charges framed by him. 1929 Bom. 269; 30 Cr. L. J. 1066; 31 Bom. L. R. 523; 119 I. C. 647.

—the commitment is bad if the maximum punishment under each offence could be inflicted by the Magistrate. 1906 A. W. N. 28; 3 A. L. J. 14; 13 Cr. L. J. 94; 11 Bom. L. R. 18; 9 Cr. L. J. 163; 6 A. L. J. 989; 11 Cr. L. J. 54; 24 C. 429.

—the H. C. cannot interfere when the M. being of opinion that he cannot adequately punish the accused, exercises his discretion by committing the accused to the Sessions. 11 A. L. J. 439.

—the H. C. cannot interfere where a M., though empowered to inflict the maximum punishment provided, commits the case being of opinion that it should for other reasons be tried by the Sessions Judge. 35 M. L. J. 559; 42 M. 83; 19 Cr. L. J. 997.

—a commitment once made, stands, unless quashed by the H. C. and if it is not quashed the trial of the persons must take place in pursuance thereof. A commitment is quashed with only one object, namely, that the trial of the persons committed may not place it serves no purpose
557, 26 Punj. L. R. 767; 7

—primary effect of the order of quashment is to supersede any

action taken by the M. under s. 210 Cr. P. C. and the subsequent proceedings thereto. The order does not amount to discharge and no fresh complaint is necessary. 1929 Cal. 756; 1929 Cr. C. 468; 34 C. W. N. 13 F. B.

—as the S. J. has jurisdiction to try any case committed to him for trial, if the trial is legally held, an irregularity in the committal will not vitiate the proceedings in the Sessions Court.

S. 215. (Quashing commitment under s. 213)—contd.

When a person has been put on his trial and pleads to the charge the commitment cannot be quashed and it will be too late to object to the commitment after the accused has pleaded to the charge before the Sessions Court. 42 C L J. 114; 90 I. C. 440; 26 Cr. L. J. 1560.

—commitment of a case triable by a Magistrate going on leave merely on the ground that the witnesses for the accused are not in attendance and that it would be inconvenient for his successor to commence the case anew, is improper. Rat Un. Cr 110, 16 M. L. J. 525 3 Cr L J 99

—if on the face of the case the commitment is valid it should not be quashed. 17 M 402, Rat Un. Cr. 922, 16 M. L. J. 525.

—the fact that the offences disclosed by the evidence taken are not exclusively triable by the S J is no ground for quashing commitment 7 M L T. 186, 16 M L. J. 525.

—commitment on merely presumptive evidence is not bad in law. 4 C W N. 116 (note).

—commitment by the same order of two sets of accused on the ground that either of them is guilty of the offence is bad. 17 M L. J. 46

—joint enquiry does not vitiate the commitment. 7 Bom. L. R. 457, 25 M 61, 26 M. 592, 1900 A. W. N. 206.

—commitment after order of discharge on fresh evidence is good. 5 C. W. N. 169, 7 M. H. C. R. Ap. 40.

—discharge by S. J. on appeal is not bar to a subsequent commitment by a competent court. 29 C. 412; 6 C. W. N. 640.

—discovery of fresh evidence on further inquiry after commitment is of no avail 1885 A. W. N. 53.

—civil suit to establish genuineness of documents is not a ground for quashing commitment. 18 B. 581, or for stay of preliminary inquiry prior to commitment. 31 C. 858 *contra*. 2 Weir 260.

—commitment to the very S. J. before whom the offence of perjury was committed is not bad. 1 B. 311, 4 A. 150.

—commitment for an offence under s. 211 I. P. O. without judicial inquiry into the false charge but on the police report only, is not bad. 8 C. 582.

—commitment without the requisite sanction is bad. 6 A. 98, 24 M. 121, so also where the prosecution is commenced after 6 months from the date of sanction. 22 C. 176

—want of evidence to convict the accused with the offence is sufficient ground for quashing a commitment. 6 A. 98, 5 C. W. N. 411, 2 C. L. J. 46, 9 C. W. N. 629.

—commitment without judicial discretion but at the suggestion of the D. M. is bad. 15 M. 39, 9 Bom. L. R. 225, 2 Weir 260.

—where the D. M. recommended that certain proceedings should be quashed owing to the delay in the conduct of the case but it appeared that the delay was not due to the complainant, held that to quash the proceedings at that stage would amount to

S. 215. (Quashing commitment under s. 213)—contd.

denial of justice. 99 I C 596 : 28 Cr. L. J. 164 : 1927 Lah. 66 : 27 P. L. R 705.

—proceeding by a warrant instead of by a summons cannot be the ground for quashing the commitment. 1 W. R. Cr. 16.

—an approver cannot be committed along with the co-accused. 22 B 493, 24 M 321, 14 W. R. Cr. 10, 19 W. R. Cr. 43, 25 B. 675, 20 A 529 22 C. 50, 15 M 352, or before the trial of the co-accused. 14 A 336, 1892 A. W. N. 21.

—commitment in the absence of the accused, 2 Weir 259, 5 C. W. N 110 and without giving notice to the accused. 6 M. 372, 1908 A. W. N 45 : 5 A L J. 74, is bad. *But see* 12 C L. R. 120

—where the accused postponed cross examination in order to have the copies of the statements of witnesses before the police and the M. afterwards refused to allow him to cross-examine and committed him to Sessions, the commitment should be quashed. 103 I. C. 597 : 1927 Pat 243 : 28 Cr. L. J 709 : 6 Pat 329, 8 Pat. L. T. 780.

—commitment made without examining the defence witnesses should be quashed. 1906 A. W. N 306 : 4 Cr. L. J. 451, 20 A. 264.

—where the accused were committed to the court of Sessions because (1) the pleader of the accused so desired and (2) the case appeared to be sensational, such committal was bad in law and the High Court had jurisdiction to set it aside. 93 I. C. 703 : 28 Bom. L. R. 293 1926 Bom 251 27 Cr. L. J. 419.

—the S. J. cannot remand a case committed to him for the cross-examination of the prosecution witness 2 Weir 260.

—commitment made under the direction of the H. C. under s. 526, Ch IV cannot be revised. 27 M. 54.

S. 216. (Summons to witness for defence when accused is committed).

—a party has a right to call upon the court to compel the attendance of witnesses who had been summoned and had neglected to attend. 6 C. W. N. 548, 4 A. 53.

—in every petition the M. should make an order either granting or refusing it, and an order merely to "file" it is improper. 6 C. W. N. 548.

—a Magistrate cannot refuse to summon witness except on the ground of vexation, delay &c. 2 Weir 263, 23 W. R. Cr. 56, 6 C. 714 : 8 C. L. R. 70, 8 A. 668.

—the M. refusing to summon witness must record the reasons. 8 A. 668, 6 C. 714 : 8 C. L. R. 70.

—order to deposit expenses of witnesses should be very sparingly made. 7 P. R. Cr. 1898, and the M. must fix amount. 4 M. H. C. R. 81, and the money cannot be credited to the Government. 6 M. H. C. R. Ap. 9.

—to ascertain whether the witness is material the M. cannot enquire into the nature of defence. 3 C. 573 : 1 C. L. R. 352.

—a Judge cannot decide on the credit of a witness before hearing him. 19 M. 375.

S. 216 (Summons to witness for defence when accused is committed)—*confd.*

—witness must be re-summoned when absence is due to delay on service of summons. 4 A. 53: A. W. N. (1881) 107.

—Sessions Court may in its discretion summon witness for the defence 19 A. 502.

S. 217. (Bond of complainants and witnesses).

—the Magistrate is bound to bind over those witnesses whose evidence is material to the case. 1883 A. W. N. 37.

—the Magistrate cannot call for bonds with sureties nor can he require recognizance from defence witnesses who have never appeared. 2 W. R. Cr. 57

S. 219. (Power to summon supplementary witnesses).**Amendments**

The amendment has provided (i) supplementary witnesses to be examined not only by the committing M. but by any other M. empowered to commit for trial (ii) absolute right to the accused to get a copy of the evidence.

—after the commencement of the trial the S. J. cannot direct the committing M. to call additional witnesses and hold enquiry. 29 P. R. Cr 1888, 6 C. 714: 8 C. L. R. 70.

—the proper course is to point out to the committing M. that he could summon and examine any supplementary witness who could give evidence. 4 P. R. 1892.

—the section provides for cases in which there may be an accidental gap in the evidence. In such a case the Sessions Judge may call for additional evidence at the trial under s. 540, or the committing M. may himself take steps before the trial is commenced to supplement the evidence. 23 Cr. L. J. 79 (Oudh)

—the committing court becomes *functus officio* and loses all jurisdiction over the cases after the commitment and special provisions have been made in ss 216 to 219 to enable the court to retain jurisdiction only in respect of some matters. 51 C. 980

S. 221. (Charge to state offence).**Amendments.**

Sub-sec. (7) has been amended superseding the decision reported in 2 Weir 464 where it was held that if the sentence passed was within the Magistrate's competency the details of previous conviction need not be given.

What is a "charge"?

—"charge" is a written document containing the description of the offence which the court finds *prima facie* proved. 8 Bom. 200.

How charge is to be drawn up?

—as to the framing of charge the courts in this country are governed by the provisions of the Code which are not and do not purport to be an exact reproduction of the English rules as to indictments. 32 M. 384, 33 M. 3.

S. 222. (Particulars as to time, place and person)—contd.

—any number of distinct criminal breach committed within one year constitutes only one offence. 32 C. 1095 : 10 C. W. N. 51. 30 B 49

—trial of offences under s. 406 I. P. C. committed on five different dates is not bad. 1929 Cal. 175 : 30 Cr. L. J. 706 : 116 I. C 722

—the joinder in one trial of charges of criminal breach of trust in respect of two distinct items with a charge in respect of a gross sum is a joinder of only three charges and is not bad. 29 M. 558, 25 M. 61 *Dist.*

—when the accused was charged with having stolen necklaces in connection with his management of a temple and it was found by the Magistrate that accused had not committed theft on any particular day but had committed criminal breach of trust in a series of transactions, the actual misappropriation in regard to two of them being found to have taken place not within an interval of one year, held, that the transaction with regard to each necklace being a separate one, it was necessary to charge the accused separately with each offence and to try him separately unless the provisions of ss. 234 or 235 could be complied with. 49 A. 312 . 1927 A. 223 : 99 I. C. 603 : 28 Cr. L. J. 171 : 25 A. L. J. 217.

—when more persons than one are jointly charged with criminal breach of trust with respect to the same amount, it is bad for misjoinder of charges. The charges against them must be of misappropriation in one case and abetment in the other or in the alternative, of misappropriation or of abetment. 16 C. W. N. 600 : 16 Ind C 650 : 13 Cr. L. J. 506.

—where the charge refers to items which extend over a period of more than one year the trial is illegal. 17 C. W. N. 479 : 14 Cr. L. J. 219 . 19 Ind. C. 315, 64 P. L. R. 1905 : 14 P. R. Cr. 1905, 11 C. 106, 25 M. 61 P. C.

—if the particular items are specified the charge will not be illegal by reason of the fact that the items exceed three in number 24 A. 254.

—a charge in respect of a gross sum without specifying several items is a charge of one offence and not of several offences 33 A. 36.

—an accused cannot be charged in respect of three specific items and also in respect of the aggregate of two items. 38 I. C. 422 (c)

—an appellate court cannot convict accused of an offence not charged in the grounds of appeal. 63 P. L. R. 1911 : 9 Ind. C. 436.

S. 223. (When manner of committing offence must be stated.)

—the English authorities do not govern the drawing up of charges under the Cr. P. C. 32 M. 384.

—the question as to whether further particulars are necessary under this section is a question of discretion in each case. 39 C. 781.

S. 223. (When manner of committing offence must be stated)—*contd*

—when the charge under s. 217 I. P. C. is expressed in vague terms the prosecution, on appeal, should be limited to the particular sense in which the charge was understood at the trial. 2 B. 142.

—when the charge is under s. 124 A, I. P. C. for seditious writings or speeches the requirements of law are satisfied, if the charge gives such a description of the words used as is reasonably sufficient to enable the accused to know the matter with which he is charged. 32 M. 384, 33 B. 77, 19 M. L. J. 81; 5 M. L. T. 24; 9 Cr. L. J. 140 *contra*, 32 M. 3.

—if the whole speech or article is set out in the charge without specifying the particular passage in defect, if any, is cured under ss. 225 and 537. 33 B. 17 19 M. L. H. C.

—in a charge of rioting, if up in a mob accused is held responsible for the unnecessary violence, give the names of other members of the unlawful assembly, the names of the members of the assembly must be stated. 11 C. 106, 2 C. L. J. 539.

—in ordinary charge under s. 217 I. P. C. the omission to state the common object is only an incurable defect which does not vitiate the conviction. 9 C. W. N. 655.

—the question is whether the omission has misled the accused and occasioned a failure of justice, *see the above case*.

—in a charge of perjury, the charge should be set out in full, it should not be vague. 10 C. 5. Evidence was a tissue of perjury, the gist of the accusation was sufficiently clear. 13 C. W. N. 685 P. C.

—in a charge of attempt to cheat, the particulars i.e., the person attempted to be cheated and the manner in which the attempt was made, must be stated. 8 C. W. N. 278.

—where in a case of cheating the charge did not correctly set out the fact of the case for the prosecution upon which it was founded there was material defect, though it might be condoned as the accused was not prejudiced. 29 C. W. N. 483; 1925 Cal. 674; 26 Cr. L. J. 906; 86 I. C. 970.

—in a case of cheating the charge must set out the manner in which the offence was committed [s. 223 III (b)]. Whether the words of the charge are reasonably sufficient to give the accused notice of the accusation which he has got to meet, depends upon the circumstances of each case. Whether the omission to state the manner of cheating is material or not depends upon the fact whether the accused has or has not been misled by such omission and whether it has occasioned a failure of justice. 29 C. W. N. 408; 41 C. L. J. 172; 26 Cr. L. J. 849; 1925 Cal. 603; 86 I. 705.

—in a charge of luring house-trespass under s. 456, I. P. C., intention need not be specified. 22 C. 391.

S. 223. (When manner of committing offence must be stated)—*contd.*

S. 224. (Words in charge taken in sense of law under which offence is punishable).

—a charge for being a member of an unlawful assembly with the common object of committing assault is the usual form of charge when the common object is to do violence to some person. It is immaterial whether the offence to which there was a common object was assault, simple hurt or grievous hurt. So it is not necessary to alter the charge to one of voluntarily causing hurt 104 I C. 97 1927 Pat. 104 Cr. L. J. 769 : 6 Pat. 832 : 8 Pat. L. T. 825.

S. 225. (Effect of charge when the common object is different from the common offence.)

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—when the charge is under s. 124 A, I. P. O. for seditious writings or speeches, the requirements of law are satisfied if the charge gives such a description of word used as is reasonably sufficient to enable the accused to know the matter with which he is charged. 32 M. 384 ; where the accused is not misled the defects do not vitiate the charge 32 M. 3, 25 B. 90, 33 B. 77.

—if the whole speech or article is set out in the charge without specifying the particular passage, the defect, if any, is cured under ss. 225 and 537, 33 B. 77, 19 M. L. J. 81.

—where the S. J. in his charge to the jury referred to two common objects while in the charge he mentioned only one of those common objects the conviction was illegal, as it might well have been that they had accepted the one which had not been charged. 22 C. 276.

—the question in each case is whether the common object established agrees in essential particulars with that laid in the charge. 36 C. 865.

—where the charge was for criminal breach of trust in respect of certain deeds but the accused was convicted of embezzling not the deeds but the amount obtained by them, the conviction was bad. 12 C. W. N. 577 : 7 Cr. L. J. 372.

—the omission to mention the property taking possession of which was the common object, is fatal 32 C. 295 F. B., 9 C. W. N. 605, 22 C. 276.

—in case of joint trial of warrant and summons cases the charge should contain the offence in the summons case. 29 C. 481.

S. 225. (Effect of errors)—*contd.*

—omission to state common object in charge under ss. 143 and 147 does not vitiate conviction if there is evidence on the record to show it. 21 C. 829, 4 O. W. N. 196, 36 C. 159, 9 O. W. N. 599.

—where the accused have been in any way prejudiced by the omission in the charge of the common object of the unlawful assembly the provisions of section 225 should be applied. 95 I. C. 72 : 1926 Bom. 314. 27 Cr. L. J. 744 : 28 Bom. L. R. 497.

—the appellate court cannot find a different common object from what was mentioned in the charge. 27 C. 990 : 5 O. W. N. 31, 30 C. 284.

—in determining whether any error, omission or irregularity has occasioned a failure of justice, the court should have regard to the fact whether the objection could and should have been raised at an earlier stage and to the manner in which the accused has conducted the defence. 32 M. 3, 10 B. H. C. R. 373, 10 B. 124.

—if the charge is framed in a formal manner "of the charge" 7, 101 I. C. 185,

—where the charge alleges several alternative common objects

—in case of rioting common object should be stated in the charge. 33 C. 295, F. B., 9 O. W. N. 605.

—ss. 225 and 537 would cure any omission, there may be, of the particulars required by s. 223. 81 I. C. 976 : 25 Cr. L. J. 1152 1925 Nag. 147.

—when a charge is erroneous as to the intention with which it should, before convicting with a different intention, give notice to the accused. W. N. 344, but in other circumstances that it is not necessary for the court to amend the charge. 44 C. 358.

—even in cases of the defective charges the whole trial is not vitiated but only the portion after the framing of the charge. 81 I. C. 976 : 25 Cr. L. J. 1152, 1925 Nag. 147.

S. 226. (Procedure on commitment without charge or with improper charge.)

—the court cannot 22 : 8 O. W. N. 784.
—charge so as to make it out in the complaint made to him. 32 C.

22, 8 O. W. N. 184.

S. 226. (Procedure on commitment without charge or with improper charge)—*contd.*

—but where the accused was committed to the Sessions for the murder of one person and for causing hurt to another person, under the circumstances of the case the Sessions Judge has power to add a charge relating to the murder of the latter person also. 28 O. W. N. 561; 1924 Cal. 625; 83 I. C. 485; 1924 Cal. 625; 26 Cr. L. J. 5.

the third trial was held to be 26 C. 560.

be used with great caution
C. R. Cr. 76.

—a serious charge of dacoity cannot be added after the defence case has closed, without giving the accused an opportunity to meet it. 6 C. W. N. 73, and a charge cannot be altered after delivery of verdict. 5 B. H. C. R. 9.

—the S. J. can substitute a charge of abetment for the substantive offence 11 B. H. C. R. 278, 8 C. 450; 10 C. L. R. 421. He can withdraw a charge which he himself has framed. 12 A. 551, but cannot strike off a charge for curing illegality already committed. 1 M. L. T. 409; 5 Cr. L. J. 94.

—the S. J. may remedy the omission on the part of the M. to frame a charge so as to contain a separate head for each offence. 7 W. R. Cr. 8, but cannot do so after the delivery of the verdict. 5 B. H. C. R. Cr. 9.

—the S. C. may add charges under Ss. 479 and 459 when the complaint of the husband was not merely of offence involving the use of force but was also a specific complaint of the offence punishable under those sections. 34 C. L. J. 51.

—the S. J. may add new heads of charges complaint regarding which was dismissed by the magistrate. 16 B. 414.

—the S. J. cannot expunge a charge before calling on the accused to plead to it. 7 C. L. R. 143, 16 C. W. N. 238; 13 Ind. C. 783.

—"without charge" in the sec. applies not only to the case in which there is no charge at all, but also to the case in which there is no charge in respect of such offence as the S. J. or the clerk of the Crown may think the prisoners ought to be tried for. 8 B. 200, 9 A. 525, 12 A. 551, 16 B. 414.

—the "addition" of a charge, when not supported by evidence before the committing M. is not only an error of procedure, but an improper assumption of jurisdiction, although such charge may arise out of the same circumstances. 3 M. 351, 8 C. W. N. 781.

—evidence taken upon a charge under one section should not be applied to a wholly different one. 21 C. 97.

—the alteration cannot be made at a late stage and without giving the accused an opportunity of re-examining the witnesses for the prosecution and producing his defence in regard thereto. 22 A. L. J. 239; 81 I. C. 318; 25 Cr. L. J. 798.

—a S. J. can proceed under s. 226 only on the facts appearing from the Magisterial Inquiry. 71 I. C. 593; 24 Cr. L. J. 177, 32 C. 22 *not fol.* 25 M. 61; 41 I. C. 393 *Dist.*

S. 227. (Court may alter charge).

—this sec. may be wide enough to warrant a court in altering a charge, by striking out one of the charges, at any time before judgment but it does not warrant the striking out of a charge with respect to one out of four offences for the purpose of curing an illegality already committed 29 M 569. 1 M. L. T. 409. 5 Cr. L. J. 94, 49 M. L. J. 23

—where the accused is summoned under certain section of the Penal Code but the evidence discloses an offence under another section, the Magistrate can amend the charge. The facts of the accused being originally summoned under a wrong section does not affect the trial 84 I. C. 446 1925 C. 579: 26 Cr. L. J. 302.

—where the accused were charged with an offence under a 379 I. P. C. but the M. found that the *kufas* that was cut and taken away by the accused was unripe and convicted the accused under a 426 I. P. C. as there was no prejudice the conviction was sustainable. 50 C. L. J. 285 1919 Cal. 773: 1929 Cr. C. 517.

—the court can add fresh charge upon which the accused has not been committed for trial. 9 A. 525. A. W. N. (1887), 155, 10 C. P. L. R. 13, 28 C. W. N. 561

—although the word "alter" is taken in the same sense as it is used in s. 226 as including "addition," the addition must be one to some specific charge in the nature of an alteration, and not the addition of a new charge 8 B. 200 *Contra*. 9 A. 525.

—"alter" includes withdrawal of a charge. 12 A. 552.

—"return of verdict" means return of the final verdict which the Judge is bound to record. 8 B. 200.

—when the law empowers a S. J. to add a charge at any time before judgment is delivered, he must in doing so exercise a sound and wise discretion, 6 C. W. N. 73, 28 C. W. N. 561: 1924 C. 625: 83 I. C. 485: 1924 Cal. 625: 26 Cr. L. J. 5.

—It is doubtful if the section confers jurisdiction on the Sessions Court to add or substitute a new charge on fresh evidence
"added to the charge for the first time. 97 I. C. 1041:

not alter the charge after
R. Cr. 9.

—where the accused is charged with an offence under s. 436 I. P. C. (mischief) by jury but I. P. C. read he acts without jurisdiction because trial of an offence under s. 149 read with s. 436 is virtually a trial under s. 436 and the Court must always first determine whether that offence had been committed by an individual and next whether s. 149 makes the participator responsible. 93 I. C. 976: 1926 Pat. 253: 7 Pat. L. T. 178: 27 Cr. L. J. 512.

—the adding of a new charge at the third trial was held to be regular and not exceeding power. 26 C. 560.

S. 227. (Court may alter charge)—*contd.*

—instead of amending the charge, acquittal on existing charge and fresh trial on new facts is safer to avoid miscarriage of justice. 1927 Sind 28 : 21 S. L. R. 55.

—framing of additional charge in sessions trial prejudicing the accused is illegal. 1899 A. W. N. 39, 31 B. 218. 29 B. 415, 5 A. 233

—where the accused are committed to the Sessions for the murder of one person and for causing hurt to another person, under the circumstances of the case the Sessions Judge has power to add a charge relating to the murder of the latter person also. 28 C. W. N. 561 : 1924 Cal. 625 83 I. C. 485 : 1924 C. 625 : 26 Cr. L. J. 5.

—when the accused was committed on a charge of dacoity, and the S. J. without assigning any reason, amended the charge to one of robbery, it was improper for him to thus alter the character of the charge before hearing evidence. 16 C. W. N. 238 : 13 Ind. C. 783 : 13 Cr. L. J. 127, 17 A. 576, Fol. 23 A. L. J. 436.

—a charge of rape cannot be altered to one of adultery as formal complaint of the husband is necessary. 29 C. 415.

—cancelling of charge under one sec. and substituting of another was not, under the circumstances of the case, warranted by law U. B. R. 1897—1901 Vol. 1. 64.

—but without amending a charge which is likely to prejudice the prisoner it is open to the M. to have the prisoner acquitted upon the original charge and on the asking of the Crown to have the accused charged anew according to the new facts. 97 I. C. 1041. 1927 Sind 28.

—the S. J. cannot add entirely a new charge after the examination of witnesses for the defence and at a late stage. 31 B. 218 : 5 Cr. L. J. 164.

—addition of further charge by the S. J. as to offence committed independently of the charge on which commitment is made, is illegal. 20 P. W. R. 1909 Cr. : 4 Ind. C. 993 : 11 Cr. L. J. 131, 32 C. 96, 33 C. 21, 34 C. 55, 35 C. 1.

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—amendment should be made formally and should appear on the face of the record. 9 W. R. Cr. 14.

—an application for alteration of charge should be made immediately after charge has been read and explained by the M. 27 C. 415 B. 414 : 11 Cr. L. J. 131, 32 C. 96, 33 C. 21, 34 C. 55, 35 C. 1.

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—judgment is pronounced on only three offences being committed, the court cannot remedy the error and proceed on only two.

—although a charge may be added or altered at any time before the judgment is pronounced, still it is illegal to do so at a

S. 227. (Court may alter charge)—*contd.*

late stage of the proceedings, e. g., after the prosecution case has been closed and the defence evidence has been recorded 6 O. W. N. 73, 31 B 218

—whenver facts are proved constituting an aggravated offence that is the offence which is being tried in a criminal case the M must be ever ready as the facts are disclosed either to alter the charge under a 227 or to refer the case under s. 347 Cr. P. C. 1927 Mad 307 33 I. C. 596. 28 Cr. L. J. 164.

—where the M enquired into a complaint and framed a charge under ss 352 and 304 I. P. C. and at the time of writing the judgment discovered that as the occurrences were, charges under the two sections could not be tried together, but instead of starting separate inquiries he struck out the former charge and framed a charge under s. 304 only and gave the accused opportunity to cross-examine the prosecution witnesses and adduce his own witness
 illegal and was not warranted by
 conviction was bad, 90 I. C. 914; 1925
 25 M. W. N. 746.

—a person summoned to answer a charge under s. 34 Police Act cannot be convicted under s. 279 I. P. C. without being told of the offence for which he was being tried. 23 A. L. J. 436. 88 I. C. 1. 26 Cr. L. J. 1057; 1925 All. 448.

—If the complainant compounds the offence, the court should acquit the accused upon the presentation of the petition of composition and has no power to alter the charge already drawn up 1914 P. R. 29.

S. 228. (When trial may proceed immediately after alteration).

—power to add charge at any time before judgment should be exercised with a sound and wise discretion. Sudden addition of a grave charge like dacoity and proceeding with the trial without even granting an adjournment was illegal. 6 O. W. N. 73

—when the original and amended charge are so nearly related that the trial might be deemed to have been a trial on the amended charge from the commencement and no objection was raised, the

S. 229. (When new trial may be directed or trial suspended).

—when the counsel for the accused, on being asked, require a new trial for the added charge the accused prejudiced. 8 Bom. 200 9 A. 525, 12 A. 551, 16 B. 414, 10 C. R. 13 Cr. Dis. 3 L. B. R. 75. Ref. 5 M. 20, 11 B. H. C. R. 278.

S. 229. (When new trial may be directed or trial suspended)
—contd.

—when the new charge raised different question of law or admits of a different defence on the facts, the court should always act under this sec 6 B H. C. R. Cr 75, 31 B. 218.

—when new trial is directed the Magistrate cannot refer to the former record unless specially put in evidence 7 C. L. R. 193

—the S. J. cannot add a charge as to which no evidence has been taken by the committing M, the proper course is to postpone the trial and send the case to the M for further inquiry. 3 M. 351.

S. 230. (Stay of prosecution if prosecution of offence in altered charge requires previous sanction.)

—when the original sanction for a substantive offence covered the new charge of abetment thereof which was based on the same facts in which sanction had been granted this sec did not apply i.e. no fresh sanction was necessary. 7 C. W. N. 494. 30 C. 905

—facts constituting an offence under one section is in itself no bar to a conviction for another offence under another section, provided of course that the facts stated in the order giving sanction are the same as those upon which the conviction is based. In such case it would be probably necessary to alter the charge, but this does not mean that fresh consent to the trial upon such altered charge would have to be given by the sanction authority. 1919 P. R. 31.

S 231. (Recall of witnesses when charge altered)

.....

—this section is imperative; where the Court added or altered a charge after the commencement of the trial, without allowing the accused to recall and re-examine the witnesses and the accused was thereby misled, the H. C. would order a new trial upon a charge framed in the proper manner. 1916 P. R. 33.

—the provisions of this section are preremptory and when a charge is altered the court is bound to recall any witnesses which the prosecution or the accused desires and the Judge cannot refuse to call them because the accused cannot show on what points he will further cross-examine. 104 I. C. 97: 1927 Pat. 398: 28 Cr. L. J. 769: 8 Pat. L. T. 825.

—but there is no duty laid on the court to ask the accused if he wishes to recall or resubmit any witness. The accused should ask for such permission. So there is no breach of any provisions in s. 231 if the court does not so inquire. 1930 All. 215: 1930 Cr. C. 194, 1924 All. 665, Ref.

—the provisions of this sec. are not inapplicable to cases to which the provisions of sec. 228 Cr. P. C. apply. 52 M. 346: 1928 M. W. N. 638: 113 I. C. 672: 1929 Mad. 200: 30 Cr. L. J. 223: 56 M. L. J. 600

S 231. (Recall of witnesses when charge altered)—contd.

—where the committing Magistrate at a late stage of the commitment proceedings altered the charge without giving the accused an opportunity to re-examine the witnesses for the prosecution and to produce his defence relating thereto and committed the accused to the Sessions on the altered charge, the procedure of the Magistrate was entirely illegal and likely to prejudice the accused in his trial before the Court of Sessions. 22 A. L. J. 239.

—the accused has the right to recall the prosecution witnesses after the alteration of the charge even if the alteration does not affect the defence, the Magistrate having no discretion in the matter. 1928 M. W. N. 818; 51 M. 346; 39 Cr. L. J. 223; 113 I. C. 672; 1929 Mad. 200.

—when a charge is altered the accused is entitled to examine the witnesses who were called by the prosecution of the original charge. 1929 Cr. L. J. 223; 113 I. C. 672; 1929 Mad. 200. delay record

S. 232 (Effect of material error).

—apart from the general power given to the appellate court under s. 423 (1) (b) Cr. P. C. to order retrial, this section gives the appellate court or the H. C. power to direct retrial in case of accused being misled by the want of charge or defect in the charge. 7 C. W. N. 301, 28 C. 63, 36 I. C. 134, 1916 P. W. R. 50.

—order of re-trial for want of charge should be made under this sec. and not under s. 423 (1) (6), but if there is nothing in the record to show that any valid charge could be made, further proceedings should be stayed. 30 C. 63; 5 C. W. N. 819.

cases wherein the conviction is a law as to cases in which
1: 118 I. C. 323; 1929 Cr. C.

—where the accused was convicted of an offence under s. 211 I. P. C., instead of statement thereof, the H. C. refused to interfere as there was no prejudice. 7 C. W. N. 556.

—conversion of a conviction of rioting into house-trespass and hurt, by the appellate court, is illegal. 30 C. 288, 7 C. W. N. 74, 18 C. W. N. 1274, 1276, the H. C. set aside the conviction of murder and convicted the accused under s. 326 I. P. C. on their confession and the evidence of two witnesses. 8 C. 211.

—where the charge framed against the accused was to the effect that they caused hurt under s. 321 I. P. C. to a certain person by means of a cutting instrument (dao) but they were convicted under s. 351 I. P. C. for assault with a lath; it was held that the accused might have been prejudiced in his defence by this error in the charge and a retrial was ordered. 17 C. W. N. 419.

—where the accused was charged for dishonestly using as genuine a forged document but was convicted for defamation the conviction was set aside. 28 C. 63.

—conviction for perjury was set aside for the vagueness of the charge. 10 C. W. N. 1099; 4 C. L. J. 558.

S. 232. (Effect of material error)—contd.

—when the charge did not contain the occasion of defamation the conviction was set aside. 7 C. W. N. 74.

—in case of defamatory statements by the accused on several occasions the charge must specify the particulars of those several occasions 119 I C. 532.

—where in a case under s. 498 I. P. C. the charge alleged that the woman was taken away from the complainant's custody but the evidence showed that the woman was taken away from the custody of another person, held it would not be proper to order a retrial on an amended charge. 1930 Cal. 138 : 1930 Cr. C. 138.

S. 233. (Separate charge for distinct offences.)**Scope of the section.**

—the first part of s. 233 lays down that for each distinct offence there shall be a separate charge. The provision is mandatory. But whether the failure to comply with it is an illegality which vitiates the trial or is a mere irregularity, regard to which there is clear

H. C. 32 C. 253 : 29 C. 11 : 1923 Cal. 341 : 26 Cr. L. J.

—in case of defamatory statements by the accused on several occasions the charge must specify the particulars of those several occasions. Sec 537 cannot cure the defect. 119 I. C. 532.

—the object of the section is to see that the accused is not bewildered in his defence by having to meet several charges distinct from one another. 19 C. W. N. 972 and to see that he is not prejudiced by such misjoinder. 15 B. 491.

—but it is better to have too many charges than to have
ed it should not be dropped
en to attack on the ground
Pat. 275 : 1929 Cr. C. 62 : 116

... the trial of each accused for
are laid down in section
tly construed so as not to
defeat the right of independent trial conferred by the general law.
5 P. L. J. 11.

—this section also applies to trials under the Bengal Excise Act and the fact that the trial has taken place in a summons case does not exclude the operation of this section 41 C. 634.

—this section applies not only to original trials but the appellate Court is also bound by it. 1905 P. R. 38.

What are distinct offences.

—omission to frame two separate charges for two distinct offences (*per Fletcher, J.*) vitiates trial, (*per Sharfuddin and Beachcroft, JJ.*) does not vitiate the trial as the irregularity may be cured by s. 537 Cr. P. C. 19 C. W. N. 972, 25 M. 61, 5 C. W. N. 866 *Ref.* 11 C. W. N. 54, 41 C. 66.

S 233 What are distinct offences—*contd.*

—when two offences are committed and they have no connection with each other they are distinct offences within the sec. 19 C. W. N. 972.

—each false entry which amounts to an act of falsification constitutes a separate offence although a number of false entries might be proved to cover one defalcation. 1922 M. W. N. 476; 1922 Mad 435 44 W. L. J. 67 72 I. C. 622.

—embezzlement of money (s. 409 I. P. C.) and falsification of accounts (s. 477 A I. P. C.) covering items other than those embezzled, are distinct offences. 38 A. 42.

—abatement of falsification of document and fraudulent destruction of document are distinct offences. 26 M. 125.

—kidnapping a boy and assaulting his mother are distinct offences. 26 M. 454

—offences under ss. 167 and 466 I. P. C., 8 C. 450; 10 C. L. R. 191 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

M 441

N 550

C. 1 C

distinct offences which should be tried separately

—simple hurt under sec. 323 I. P. C. and grievous hurt under section 325 I. P. C. are distinct offences. 50 O. 94.

—offences under sections 182 and 500 I. P. C. are distinct offences. 37 C. 604.

—theft in dwelling house and abetment of criminal breach of trust are distinct offences. 5 C. W. N. 294.

—offences under section 330 I. P. C. and 348 I. P. C. are distinct offences. (1919) M. W. N. 199.

—gang of

of trust under s. 405 are distinct offences. 30 M. 326.

—charges of adultery and bigamy are distinct offences. Rat. Un. 4.

—a book of account amounts to a

but the joinder of three charges under s. 405 I. P. C. and one under s. 477 I. P. C. against the accused in one trial 41 A. 540; 66 I. C. 322.

—where 26 different sums were misappropriated during a trial regarding

money collected from three distinct

on three distinct

—hurt caused to two persons 19 C. W. N. 314, or cheating three persons. 41 C. 66, 25 O. C. 151, or two attempts to cheat comm

on two different dates 2 C. L. J. 618, constitute distinct offences

S. 233. What are distinct offences—contd.

—wrongful confinement of several persons on several occasions constitutes distinct offences. 1919 M. W. N. 199.

—receiving stolen articles on different occasions, though the articles were the proceeds of a single burglary, constitutes distinct offences. 2 P. L. T. 47.

What are not distinct offences.

—any number of false statements in one deposition constitutes one offence because any number of false statements in the same deposition is one aggregate case of giving false evidence and charges of false evidence cannot be multiplied according to the number of false statements contained in the deposition 36 C. 808, 6 M. H. C. 17

—filing three forged documents at one time constitutes one offence 20 C. 413

—embezzlement of two separate sums on two different occasions in regard to same persons is really one offence. 14 C. 128; 29 M. 558.

—misappropriation of several books of account in respect of the same estate though on different occasions is but one offence, the several books of account forming but one set of books. 17 C. W. N. 479

—stealing of several bullocks from the same herdsman at the same time is one offence. 1881 A. W. N. 154.

—theft of a box and a bicycle from one person committed at the same time is one offence. 21 Cr. L. J. 682 (c)

—kidnapping with intent to steal and theft, constitutes one offence. 11 W. R. Cr. 38.

—house-breaking by night to commit theft in the building constitutes one offence. Rat. Un. Cr. 79, 95.

—even if the articles recovered were of diverse character, it constituted the same offence as being punishable under the same section of the Code, 3 Pat. 503; 5 Pat. L. T. 319; 81 I. C. 226.

—legality of joint trial in case of misappropriation of twenty six items 76 I. C. 652; 25 Cr. L. J. 22.

—theft of two bicycles and the dishonest possession of them by different persons, knowing them to be stolen, form one transaction even though the receipt is not simultaneous with the theft. The joint trial of all of them is not bad in law. 44 A. 276; 20 A. L. J. 96; 67 I. C. 510.

—when a person is found in possession of a number of stolen articles, the offence committed by him (receiving stolen property) is a single offence and not a number of offences and it makes no difference whether the articles belong to a single owner or to different owners. But if there is evidence that the accused received the articles at different times or from different thieves, the case would be different 45 A. 485, 50 C. 594, 3 Pat 503 the mere fact that the goods stolen from two different persons or on different occasions, are found in the possession of the accused does not make it distinct

S. 233 What are not distinct offences—contd.

offences. 15 C. 511, 15 A. 317, but receiving stolen articles on different occasions though the articles were the proceeds of a single burglary constitutes distinct offence. 2 P. L. T. 47

—receiving a bribe partly on one day and partly on another is but one offence. 3 C. W. N. 32.

Joinder of distinct offences.

—one charge for three distinct acts of criminal breach of trust with three distinct acts of falsifying accounts is bad. 20 M. 328 18 C. W. N. 1151, 22 C. W. N. 596.

—the inclusion in one charge of several distinct offences is an illegality and the conviction must be set aside. 17 C. W. N. 827; 40 C. 846 20 Ind. C. 609 14 Cr. L. J. 449.

—joint trial of distinct offences not falling within the exceptions is not an irregularity curable by a 537 but is an illegality, and

26 C. 1, 10 *Overturn*, 19 C. 125, 333, 24 C. 310, 33 M. 341.

—but the joinder of two distinct offences in a single charge is an irregularity and not illegality and does not vitiate a trial unless the accused is prejudiced thereby. 31 C. W. N. 337; 1927 Cal. 330; 45 C. L. J. 591; 28 Cr. L. J. 347; 100 I. C. 827, 32 C. W. N. 839; 43 C. L. J. 138; 1928 Cal. 700.

—joinder in one charge of two distinct offences committed on one and the same date is illegal. 6 C. L. J. 757; 6 Cr. L. J. 442, 2 C. L. J. 618, 13 C. W. N. 1089.

—joint trial of several persons for distinct offences is illegal. 165 P. L. K. 1905; 5 P. R. 1905 Cr., 3 Cr. L. J. 76.

—a charge relating more than one distinct offence is bad in law. But the whole trial is not vitiated because a particular charge was in contravention of s. 233 Cr. P. C. 36 C. L. J. 149; 50 C. 94; 71 I. C. 120.

—three distinct complaints of three complainants against the same accused cannot be joined. 11 C. W. N. 1128.

—distinct charges should be framed for several dacoities committed in the course of same night though they might be tried at one trial forming one series of acts so connected together as to form part of the same transaction. 26 A. 195; A. W. N. (1903) 231, A. W. N. (1902) 42 *Ref.*

—where several persons sleeping in a hut were murdered by setting fire to it and one charge of murder comprising the names of all the victims was framed it was a defect though technical. 52 C. 253; 29 C. W. N. 173; 85 I. C. 231; 26 Cr. L. J. 487; 1925 Cal. 341; 40 C. L. J. 541.

Illegal joinder of charges.

—where two accused were charged under s. 324 I. P. O., with causing hurt to three persons and only one charge was

S. 233. Illegal joinder of charges—contd.

retrial was ordered as it prejudiced the accused. 17 C. W. N. 419 : 19 Ind. C. 308 : 14 Cr. L. J. 212.

—where several persons are murdered by setting fire to a hut there must be a charge in respect of each victim. 52 C. 253 : 29 C. W. N. 173 : 40 C. L. J. 541 : 85 I. C. 231 : 1925 Cal. 341 : 26 Cr. L. J. 487.

—joinder of two acts of extortion though arising out of the same transaction, 10 C. W. N. 53 : 3 Cr. L. J. 141, or of two attempts to cheat committed on different dates, 10 C. W. N. 520 : 2 C. L. J. 618. 3 Cr. L. J. 111, or of theft and escape from lawful custody, 3 L. B. R. 221 : 4 Cr. L. J. 389, 1 L. B. R. 361, is illegal.

—charges of criminal breach of trust and falsification of accounts committed in separate transactions cannot be tried jointly but if committed in the same transaction they can be so tried. 40 C. 318 : 20 Ind. C. 412 : 14 Cr. L. J. 428, 30 M. 328, 25 M. 61 : 5 C. W. N. 866 P. C. Fol.

—when two distinct offences committed in relation to two attachment-warrants were joined together in one charge but they formed part of the same transaction, there was not an illegality. 94 I. C.

—charges under s. 413 and 414 of the Criminal Code and s. 304 I. P. C. were so near in point of time and place that they might reasonably be held to have formed part of the same transaction and no objection to the joinder of them was taken till the matter was taken up to the H. C. in revision, held that the joinder was not illegal. 100 I. C. 381 : 28 Cr. L. J. 301 : 1927 Mad. 396 : 1927 M. W. N. 167. 50 M. 841.

—one trial for having been found in possession of stolen property belonging to two different persons and stolen at different times. 100 I. C. 381 : 28 Cr. L. J. 277 : 1 Ind. C. 335 : 64 P. W. R. 1910 : 4 Cr. L.

—charges under s. 302 and 201 I. P. C. cannot be combined. 2 Weir 301.

—joinder of accused passing and publishing defamatory resolutions with the accused transmitting the same to a newspaper, is illegal. 7 M. L. T. 127 : 11 Cr. L. J. 135 : 5 Ind. C. 436.

—in prosecution for giving false evidence the case of each accused should be separately enquired into and tried. 5 A. 17, 6 M. 251, 10 C. 405, 39 P. R. 1888, 4 Bom. L. R. 38, unless a conspiracy is proved. 4 Bom. L. R. 53.

—the accused cannot be tried jointly for abetment of falsification of document and fraudulent destruction and secretion thereof and abetment of criminal breach of trust. 26 M. 125.

—a whole series of falsified accounts may be tried in one charge. 18 C. W. N. 1152 : 19 Cr. L. J. 987.

S. 233. Illegal joinder of charges—*contd.*

—joint trial was bad when the thief and the receiver did not act together or the theft and the receiving did not form part of the same transaction 2 C. L. J. 78 (note), 1 C. W. N. 33, 33 C. 1256.

—when four persons were convicted under s. 193 I. P. C. for fabricating two *kashiyats* executed on the same date but separately, joint trial was held to be illegal 21 C. W. N. 756.

—separate retainers by separate persons of separate articles at different places, although the articles may be the proceeds of one dacoity cannot be tried jointly 33 C. 1256; 3 C. L. J. 412; 10 C. W. N. 912 3 Cr. L. J. 331.

—where the offences of mischief and rioting are quite separate transactions and in both the transactions the same persons are not the accused, a joint trial is illegal 1929 Lab. 185; 106 I. C. 450; 29 Cr. L. J. 34.

—where several accused persons were jointly charged with having on two separate dates, within twelve months, committed two offences of the same kind but not forming part of the same transaction the trial was illegal 31 C. 292; 10 C. W. N. 521; 3 Cr. L. J. 126, 11 C. W. N. 544, 4 Cr. L. J. 415 *Dist.*

—alternative charge of two different offences under two secs. is bad. 10 B. 124, 15 B. 491, 14 A. 532.

—one trial for receiving stolen properties belonging to different persons is bad. 13 C. W. N. 418 but see 3 Bom. L. R. 187.

—where two persons were tried together with respect to offences partly joint and partly separate, there was misjoinder of parties and retrial should be ordered. 23 C. 104.

—charge for substantive offence and abetment thereof is bad. 24 M. 523 P. 547.

—joinder of offences under s. 125, Railway Act and under s. 225 I. P. C. is illegal 29 C. 287; 6 C. W. N. 468, 29 C. 358.

—alternative charge of two different offences is bad in law. 10 B. 124, 15 B. 491, 14 A. 507. But alternative charge for making contradictory statements is not affected by this sec. 10 C. 937, 13 B. L. R. 324; 21 W. R. Cr. 72.

Effect of illegal joinder of charges.

—s. 233 must be strictly applied save where the Code itself provides exceptions. 28 M. L. J. 331; 16 Cr. L. J. 298; 28 Ind. C. 522, 25 M. 61, P. C. 41 C. 60, 722, 30 A. 351, 29 C. 385, 18 C. W. N. 1152.

—disobedience of an express provision of law is not a mere irregularity curable by s. 537 Cr. P. C., but an illegality and such illegality cannot be made good by subsequent acquittal or judgment upon which a conviction is based. 28 M. 61, P. C. (29 C. 7, 27 C. 839, 28 M. 61, P. C. 41 C. 60, 722, 30 A. 351, 29 C. 385, 18 C. W. N. 1152).

—but the Calcutta H. C. has held that the joinder of two distinct offences in a single charge is a mere irregularity and not illegality and cannot vitiate a trial unless that has prejudiced the accused. 31 C. W. N. 337; 1927 Cal. 330; 100 I. C. 827; 28 Cr. L. J. 347.

S. 233. Local Jolindar—contd.

—framing of a single charge for the offences of kidnapping and abduction is not illegal. 50 C. L. J 593 : 1930 Cr. C. 209.
As to the trial of "counter-case" see "cross cases."

Separate trial of distinct offences disclosed by same fact

—when the same fact discloses two distinct offences triable by two different courts they can be separately tried by the respective courts. 6 C. W. N. 550.

Waiver.

—joint trial of several distinct complaints is illegal and cannot be cured by waiver to take objection. 11 C. W. N. 128; 6 Cr. L. J. 321, 3 M. L. T. 407. 18 M. L. J. 330. 8 Cr. L. J. 152, 13 C. W. N. 418. 9 Cr. L. J. 277, 36 P. L. R. 1910. 11 Cr. L. J. 597, 64 P. W. R. 1910. *Fol* 9 C. L. J. 149. 13 C. W. N. 507; 5 M. L. T. 349 *Dis. contra* 1912 M. W. N. 545. 13 Cr. L. J. 251, 23 C. 7. 27 C. 839.

Miscellaneous

—the fact that the trial has taken place as a summons case does not exclude the application of s. 233. 18 C. W. N. 486, 19 C. L. J. 53; 41 C. 694 15 Cr. L. J. 73, 3 L. B. R. 113, 3 Cr. L. J. 150.

of charges, is not
res that the court should
act, occasioned a failure of
441, but these cases have
M. 61 P. C.

—this section does not apply to preliminary enquiry held by a committing M. 26 M. 592. 7 Bom. L. R. 457.

—when the same fact discloses two distinct offences triable by two different courts they can be separately tried by the respective courts. 6 C. W. N. 550.

—the exceptions to the sec. are not mutually and necessarily exclusive. 33 B. 77, 221.

S. 234 (Three offenses of same kind within one year may be charged together)

Amendments.

(1) By the insertion of the words 'whether in respect of the same person or not' in the section, the conflicting views of the authorities on the point have been set at rest.

the same

Scope of the section.

—the object of this section obviously is that the jury may not be prejudiced by the multitude of charges and the incor

S. 234. Scope of the section—*contd.*

venience of the hearing together of a large number of instances of culpability and the consequent embarrassment both to Judges and accused. 25 Mad. 61 P. C.

—this section provides that the trial must be limited to three offences, it does not say that the trial must be limited to three charges, the same offence may be charged under different sections of the I. P. C. and any number of such charges can be tried in one and the same trial 33 B. 77.

—the two ss. 234 and 235 Cr. P. C. must be construed apart; there is no provision which would allow the two to be added together, so to speak, in order to provide a trial of one person for more than three charges even if some of the charges may form one series of acts so connected together as to form the same transaction 1927 Nag. 22; 97 I. C. 363; 27 Cr. L. J. 1099.

—ss. 234 and 235 cannot be combined so as to try jointly the offences of kidnapping and cheating with respect to two girls on different occasions 48 A. 236; 91 I. C. 815; 1926 All. 261; 24 A. L. J. 239. 27 Cr. L. J. 143

—ss. 234, 235 and 236 are mutually exclusive. 51 A. 544; 1929 All. 202. 30 Cr. L. J. 687; 116 I. C. 794; 27 A. L. J. 329.

Applicability.

—“*offences of the same kind*” in the sec. includes offences
 „ R. 522,
 J. 149,
 A. 147,

—a person successively committing, within the space of twelve months, several offences of the same kind e. g., extortion, against different persons, may be charged with and tried at one trial for any number of them not exceeding three. 13 C. W. N. 507 49 O. 371, 7 A. 174, Rat. 331 (1887) fol. 11 C. W. N. 1128 doubted and distinguished.

—contrary view was held in 13 C. W. N. 418 where it was held that one trial of the accused for having been found in possession of stolen properties belonging to different persons and stolen at different times was illegal and also in 11 C. W. N. 1128, where it was held that section 234 refers to different acts done by the same individual or sets of individuals against the same complainant or complainants so connected with each other that they may in law be taken to be one person. (In this case three persons laid three separate complaints against the accused alleging that they committed rioting and individually caused hurt to each of the complainants and threw away and spoiled their foreign salts and other articles).

But the point has been set at rest by the insertion of the words “whether of the same person or not” in the section.

—this section applies where a person is accused of more offences than one; it does not apply where a person is charged for one offence only. 47 O. 151.

S. 234. Appliesability—*contd.*

—this section contemplates a joinder of charges for offences committed within one year 1905 P. R. 14 and it refers to offences and not to transactions. It does provide that all offences committed within one year in three different transactions may be tried and joined in one trial 10 S. L. R. 192, 30 M 328.

—where there was a charge of an offence under a 413 I. P. C. and some of several instances of the receipt of stolen property alleged were proved and the evidence did not make out a "habit" in the accused and the accused was thereupon convicted on separate charges for an offence under a. 411 I. P. C., the conviction was not illegal and a. 238 and not 231 or 236 applied to the case. 1928 All. 139 : 107 L. C. 241 : 29 Cr. L. J. 232

—this sec. does not apply where several persons are jointly accused but refers to the case of a single accused only 33 C. 292 :

L. R. 1911 : 28 P. W. R. 1911

Cr. L. J. 477 Fol 11 C. L. J.

C W N 54 : 6 C L. J. 757,

1 Ref 794 (Bur) 20 Cr. L. J.

7 (Nag.) but see *contra* below

—the word "a person" in ss. 234-238 includes a set of persons, having its ordinary and natural meaning as defined by the General Clauses Act and is not to be restricted to the singular number. 3 P. L. J. 224, 20 Cr. L. J. 354, M. W. N. (1919) 199, 3 P. L. J. 134 : 19 Cr. L. J. 673.

—the word "section" in this sec. is not invariably to be read as singular. It is not the intention of the Code, to exclude from the operation of the sec. an offence because it is made the subject of more than one charge. 33 B. 77, 221.

—the power given by the sec. is to be used with great care and caution when there are different complainants. 19 C. W. N. 557 : 16 Cr. L. J. 332.

—the sec. modifies a. 233, but there is nothing in the sec. to prevent an accused from being separately charged and tried on the same day for any number of distinct offences of the same kind committed within one year. 3 C 540 : 1 C. L. R. 478, 12 Bom. L. R. 226, 50 C. 632

—this sec. must be read subject to the special provisions of sub.sec. (2) to a. 222, 27 A. 69, 24 A. 254.

One offence.

—any number of false statements in one deposition constitutes one offence. 36 C. 808, 6 M. H. C. 17.

—filing three forged documents at one time constitutes one offence. 20 C. 413.

—embezzlement of two separate sums on two different occasions in regard to same persons is really one offence 14 C. 128, 29 M 558.

—misappropriation of several books of account in respect of the same estate though on different occasions is but one offence.

S. 234, One offence—contd.

the several books of account forming but one set of books. 17 C. W. N. 479.

—where a charge under s. 409 I. P. C. consisted of a total amount which was made up by adding together the several amounts embezzled by the accused at different times but the accused did not realise and misappropriate different sums at different periods there was no contravention of sec. 234 Cr. P. C. 1927 Cal. 409 : 45 C. L. J. 207 ; 101 I. C. 597 : 28 Cr. L. J. 469.

—stealing of several bullocks from the same herdsman at the same time is one offence. 18 A. W. N. 154.

—theft of a box and a bicycle from one person committed at the same time is one offence. 21 Cr. L. J. 682 (C).

—theft of two hulls at the same time though belonging to two different persons constitutes a single offence. 90 I. C. 151 : 26 Cr. L. J. 1495.

—kidnapping with intent to steal and theft constitutes one offence. 11 W. R. Cr. 38.

—house-breaking by night to commit theft in the building constitutes one offence. Rat. Un. Cr. 79, 95.

—even if the articles recovered were of diverse character, it constituted the same offence as being punishable under the same section of the Code 3 Pat. 503. 5 Pat. L. T. 319 : 81 I. C. 226.

—legality of joint trial in case of misappropriation of twenty-six items 76 I. C. 652 : 25 Cr. L. J. 22.

—theft of two bicycles and the dishonest possession of them by different persons, knowing them to be stolen, form one transaction even though the receipt is not simultaneous with the theft. The joint trial of all of them is not bad in law, 44 A. 276 : 20 A. L. J. 96 : 67 I. C. 510.

—when a person is found in possession of a number of stolen articles, the offence committed by him (receiving stolen property) is a single offence and not a number of offences and it makes no difference whether the articles belong to a single owner or to different owners. But if there is evidence that the accused received the articles at different times or from different thieves, the case would be different. 45 A. 485, 50 C. 594, 3 Pat. 503 ; the mere fact that the goods stolen from two persons or on different occasions are found in the possession of the accused does not make it a distinct offence. 15 C. 511, 15 A. 317, but receiving stolen articles on different occasions though the articles were the proceeds of a single burglary, constitutes distinct offences. 2 Pat. L. T. 47.

—receiving a bribe partly on one day and partly on another is but one offence. 5 C. W. N. 32.

Distinct offences.

—falsification of accounts under s. 477 A. and criminal breach of trust under s. 409 are distinct offences. 30 M. 328.

—charges of adultery and bigamy are distinct offences. Rat. Un. 4.

S. 234. Distinct offences—contd.

—misappropriation of three sums of money from three distinct persons constitutes distinct offences. 6 C. L. J. 757.

—hurt caused to two persons 19 C. W. N. 972, or cheating three persons, 41 C. 66, 25 O. C. 151 or two attempts to cheat committed on two different dates. 2 C. L. J. 618, constitute distinct offences.

—wrongful confinement of several persons on several occasions constitute distinct offences. 1919 M. W. N. 199.

—receiving stolen articles on different occasions, though the articles were the proceeds of the single larceny, constitutes distinct offences 2 P. L. T. 47

Not exceeding three.

—an accused can only be charged and tried at one trial for any number of offences of the same kind not exceeding three and committed within the space of one year and each falsification of a book of account being a distinct offence under a. 477 A I. P. C., not more than three of such offences committed within the space of one year can be tried together, 26 C. 560, 30 M. 228, 1911 M. W. N. 536, 32 A. 57, 44 M. L. J. 67, 41 C. 722, but if such offences are committed in the course of a single transaction any number of them can be tried together 1912 M. W. N. 545.

—three charges of criminal misappropriation and a charge under section 210 I. P. C. 22 C. W. N. 596, three offences under section 411 I. P. C. and three offences under section 414 I. P. C. 49 C. 555, and three offences of forgery and three offences of criminal breach of trust 32 A. 219, 44 A. 540, cannot be tried together,

—but when such offences are committed in the course of same transaction they may be joined together. 22 Cr. L. J. 230 (Pat.), 1912 M. W. N. 545.

—where three offences are offences of the same kind within the meaning of sec. 234 Cr. P. C. and they are committed within the space of one year the M. co. hold one trial 29 Cr. L. J. 287; 107 I. C. 826; 9 A. I. Cr. C. 483.

—where the charge consisted six distinct and separate charges of falsification of six separate and distinct accounts, the violation of the law under this section which provides that not more than three such offences should be tried together, rendered the trial illegal. 45 C. L. J. 1; 28 Cr. L. J. 291; 100 I. C. 371; 1927 Cal. 946.

—a single charge for three distinct offences under a. 420 I. P. C. in relation to three different persons committed within one month is not illegal. 96 I. C. 221; 1926 Pat. 347; 27 Cr. L. J. 909.

—the illegality of mis-joinder of charges cannot be cured by the judge by striking out one of the charges after the trial has closed, 29 M. 569, or by saying in his judgment that he would proceed only on the charges legally joined. 49 C. 555; 1922 Cal. 401.

When joint trial holds good.

—single charge is good in cases of embezzlement of three sums of money within one year. 32 C. 1085, but such charge

S. 234. When joint trial holds good—contd

does not stand if the accused is prejudiced. 16 I. W. R. 1907; 6 Cr. L. J. 137.

—four charges in respect of two offences under ss. 124 A. and 153 I. P. C. relating to two articles in the newspaper were held to be legal as there was no misjoinder of charges. 33 B. 77, 221.

—a conviction for criminal breach of trust committed by misappropriation of a large sum of money made up of various items is not bad. 22 M. L. J. 112, 31 C. 328, *contra* 2 C. W. N. 341.

—where the charge consisted of a total amount which was made up by adding together the several amounts embezzled by the accused at different times but it appeared that the accused did not realise and misappropriate different sums at different times, there was no contravention of the provisions of the section. 45 C. L. J. 207; 1927 Cal. 409; 101 I. C. 597, 28 Cr. L. J. 469.

—three charges of misappropriation committed within a year can be tried together. 22 C. W. N. 596.

—where a rebellion was organised and continued under the leadership of a particular person when the accused followed at one stage or the other they were all jointly triable for the offence of waging war against the King. 1925 M. W. N. 192; 48 M. L. J. 308.

—where two persons were jointly tried and convicted of passing counterfeit coins on three different occasions to three different persons on the same day the trial was not bad for misjoinder. 44 M. L. J. 130; 69 I. C. 447.

—where several accused were tried together upon several charges the first of them being criminal conspiracy to commit murder and other offences under s. 120-B and the other charges being various specific offences committed in pursuance of that conspiracy, there was no misjoinder of charges within this section. 1927 P. C. 215; 110 I. C. 225; 29 Cr. L. J. 673; 54 I. A. 45; 8 Lah. 230 P. C.

—where two persons abducted a girl and took her in the house of a third person where they wrongfully confined her and all the three persons were jointly tried, the first two for offence under s. 366 I. P. C. and the third under s. 368 I. P. C. the joint trial was not bad. 1928 Lah. 751; 29 Cr. L. J. 496; 109 I. C. 224.

When joint trial is bad.

—joint trial of offences or of accused unconnected with one another is bad. 12 M. 273. 11 C. W. N. 274 (note), 5 C. W. N. 294. 30 A. 351, 4 L. B. R. 315 F. B.

—joint trial of several accused charged with the same offence as well as with some other separate offence is bad. Rat. Uo. Cr. 509.

—a charge for threatening more than three persons with injury if they did not pay him bribes was held bad for multiplicity. 2 Weir 199, 11 C. W. N. 1128, and so also the joinder of six charges relating to report and evasion. 14 Bur. L. R. 242; 4 L. B. R. 294.

—criminal breach of trust respect to various items is bad.

S. 234. When joint trial is bad—*contd.*

N. 412: 30 M 328, 30 A 351, 32 A. 57: 2 P. R. Cr. 1905, 41 C. 722: 18 C. W. N. 1152, 5 M W. N. 536: 13 Cr. L. J. 21.

—three distinct acts of criminal breaches of trust and three distinct acts of falsification of accounts, though in respect of the same items cannot be tried together. The case is not covered by s. 234 and the offences are not of the same kind and it does not come under s. 335 because there are three defalcations committed on different occasions, and the false entries connected with one defalcation cannot be said to form part of the same transaction with other defalcations and falsifications. 49 B. 892: 92 I. C. 689: 1926 B. 110: 27 Cr. L. J. 305, 41 C. 722 *approved*. 33 B. 221 *Dist.*

—each act of falsification of a book of accounts constitutes a separate offence under s. 477 A. and so an accused can be charged and tried at one trial for three acts of falsification committed within one year. 26 C. 560, 3 C. W. N. 412.

—joint trial of thief and the receiver of stolen property was held to be bad as it did not form part of the same transaction. 21 C. W. N. 1111.

—ss. 234 and 235 Cr. P. C. do not warrant the joinder of three charges under s. 408 I. P. C. and one under s. 477 A. I. P. C. against the accused in one trial. 44 A. 540: 66 I. C. 322.

—both ss. 234 and 235 cannot be added together so as to try an accused for more than 3 charges. 1927 Nag. 22.

—joint trial of three complaints of three complainants against the same accused is bad. 11 C. W. N. 1128 *contra* 19 C. W. N. 557, 13 C. W. N. 418, 18 C. W. N. 183, *but see note to amendment of the section*

—joint trial of two persons committing theft of paddy of the same person but on different dates is bad. 20 C. W. N. 672.

—where one accused was charged with separate offence and the other accused was charged with abetment of two of these offences but not abetment of the third, s. 233 governed the case and the trial. 84 I. C. 463: 26 Cr. L. J. 319: 1925 Rang. 198.

—the joinder of charges under ss. 411 and 414 of the Penal Code is bad and vitiates the whole trial. If the charges had been framed in the alternative, it might have been good under s. 236. The error cannot be remedied by the Judge saying in his judgment that he would proceed only on the charges legally joined. 49 C. 555: 1922 Cal. 401.

S. 235. (Trial for more than one offence)**Scope of the section.**

—it is an enabling section and does not necessitate the inclusion of all the charges triable under that section, in one trial. 1927 Pat. 13: 97 I. C. 364: 27 Cr. L. J. 1100: 8 Pat. L. T. 12: 6 Pat. 208.

—it is an enabling section and not imperative. Rat. Un. Cr. 307, 8 C. 481, 6 A. 121, 1906 A. W. N. 32, 12 Bom. L. R. 226, 1 S. L. R. 73.

S. 235. Scope of the section—contd

—provisions of this sec are merely enabling Joinder of charges though legally permissible under this sec should not be resorted to in case there is risk of embarrassing the defence. 52 C. 253; 23 C. W. N. 173; 40 C. L. J. 541 85 1 C. 231 1925 Cal 341 26 Cr. L. J. 487, 59 C 94

—this section is not controlled by the words "not exceeding three" occurring in s 234. 19 A. L. J. 392

—this application of sub-sec (1) to the sec. and of para (1) of s 71 1 P. C. is discussed in 16 C 442. F B 6 A 121. *approved* 11 C 349, *overruled*

—joint trial of the accused for different offences is illegal if the offences were not committed in the same transaction. 88 I. C 527; 26 Cr. L. J. 1167; 1925 Lah. 326

—where certain persons were charged regarding a series of transactions of the offence of criminal conspiracy to cheat, cheating etc. several convictions were sustainable though there was but only one indictment. 55 C 858. 32 C. W. N 319 1928 Cal 675

—the trial of different offences not forming part of the same transaction is prohibited by s. 235. What does or does not form part of the same transaction may be considered to be a question of fact in each particular case 31 C. W. N. 337; 1927 Cal. 330; 100 I. C. 827; 28 Cr. L. J. 347. 45 C. L. J. 591; 7 A. I. Cr C 543.

—acts may be considered to form part of the same transaction if there are between these acts proximity of time, community of purpose and continuity of action. *Above case*.

—an accused person may be separately tried and convicted of two false statements made on different subjects in the same deposition 51 B. 110; 1927 Bom. 177. 100 I. C. 981; 29 Bom. L. R 170; 28 Cr. L. J. 373.

Same transaction, what is?

—the word "transaction" suggests not necessarily proximity in time, so much as continuity of action and purpose. 34 B. 49 p 54

—the expression "same transaction" is incapable of exact definition. The area of facts covered by the expression varies with circumstances of each case 1925 Sind 233.

—whether the acts are so connected together as to form part of the same transaction is a question of fact. 1910 M. W. N. 511.

—the real test to determine whether several offences are so connected as to form the same transaction depends on whether they are so related to one another in points of purpose, or as cause and effect, or as principal and subsidiary acts, as to constitute one continuous offence 27 B. 135, 20 C. 822, 7 C. W. N. 339, 16 B 414, 19 C. W. N. 181; 27 Ind. C. 184, 1925 S. 233, 1918 M. W. N. 525, 13 N. L. R. 35, 91 I. C. 433, 1925 Sind 233; 27 Cr. L. J. 257, 93 I. C. 248; 1926 Sind. 151, 1925 Oudh 401; 29 Cr. L. J. 801; 111 I. C. 305.

S. 235. Same transaction, what is?—contd.

—the most essential tests of "same transaction" are continuity of action and community of purpose. 19 C. W. N. 672, 33 M. 502, 30 B. 49, 43 M. 411, 5 P. L. J. 11, 1 Lab. 562.

—acts may be considered to form part of the same transaction if there are between them proximity of time, community of intent and continuity of action. 31 C. W. N. 337, 1927 Cal. 330, 100 I. C. 827, 28 Cr. L. J. 347, 45 C. L. J. 591.

—if a series of acts are so connected together by proximity of time, community of criminal intention and continuity of action and purpose or relation of cause and effect as to constitute one transaction, a joint trial is valid and is so required in the interest of public time and convenience. 50 C. 1004, 42 C. 957, 43 B. 147, 35 C. L. J. 527, 19 C. W. N. 672, 28 M. L. J. 337, 1930 M. W. N. 377.

—a series of acts separated by intervals are not excluded from the "same transaction" if the accused started together for the same goal. 30 B. 49, 14 Bom. L. R. 972.

—where all the criminal acts constituting offences under ss. 302, 325 and 223 I. P. C. were found to be the outcome of a conspiracy to kill on one day as many members of the deceased's family as could be found and they were so closely connected by continuity of purpose and progressive action towards a single object, they all formed one transaction. 95 I. C. 467, 1226 Lah. 367, 27 Cr. L. J. 803, 27 Punjab L. R. 379.

—the trial of the accused on a charge under s. 170 I. P. C. and on three charges of extortion in respect of three sums, and in the alternative, on three charges of cheating in respect of those sums and on a charge of an attempt at extortion in respect of another sum, was not illegal, offences charged being committed in the same transaction. 15 C. W. N. 732, 12 Cr. L. J. 346.

—several acts of violence alleged to have been committed against a person of the second he
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Cr. L. J. 480, 31

—wrongful confinement of several persons on two occasions for the same purpose viz. for extortion of money is the same transaction. 42 C. 760.

—where a number of accused were charged with escaping from lawful custody, rioting, hurt and assisting in the said acts, they could be tried together as everything happened in the course of the same transaction. 18 L. W. 818.

—when a police officer in taking charge of the properties of the deceased lady misappropriated some of her ornaments, pilfered

S. 235. Same transaction, what is ?—contd.

the entries in his diary and substituted some fresh pages, held, that charges under ss 218, 402 and 477 (a) framed in relation to acts which were so connected together as to form one transaction, could be legally joined and tried at one trial. 27 C W N 626; 1923 Cal. 617.

—an accused can be tried at one trial for the offences of house-breaking by night to commit theft and of theft, and separately be convicted for each of the offences. Rat. Ua. Cr. 228

—the trial of the accused on seven charges, three of dacoity, one of document and one of cheating, which formed one transaction. 11 C 5 Fol. and Ref 13 C. W. N. 1089 ;

—but where there were four distinct acts on different dates relating to four different documents, charged under s 477-A, held that as the offences did not come within a series of acts so combined together as to form the same transaction, they could not be tried together 95 I. C. 393; 1926 Lah. 193; 27 Cr. L J 793.

—rioting, causing hurt to one person in the riot and causing hurt to another person in the same riot, form one transaction. 39 A. 623.

—when several persons were wrongfully confined and fined and subsequently, for non-payment of the fine, were again confined and maltreated, it was one transaction. 19 C. W. N 181 16 Cr. L. J. 120.

—receiving stolen property and assisting its concealment form the same transaction. 28 A 313.

—a person dishonestly receiving stolen property can be charged and convicted of voluntarily concealing or disposing of that property 49 B 878 27 Bom L R. 1373; 91 I C 690; 27 Cr. L. J. 14 1926 Bom. 71

—conspiracy to wage war and concealing its existence from the authorities form the same transaction. 37 C 467.

—rioting and causing hurt in the riot form the same transaction. 7 A. 29.

—forgery, abetment of forgery and use of the forged document is one transaction. 40 B. 97

—trial for charges under ss. 304, 149 and 340 is not illegal but should be carefully connected 85 I. C 147; 1925 Cal. 413; 26 Cr. L. J. 467.

—where seven *kobalas* executed by same person in favour of seven different persons were presented together for registration, if the Sub-Registrar attempted to obtain Rs. 2 separately from each of the seven purchasers and was willing to register any one on payment of Rs. 2, then there would be seven separate offences, but as the Sub-Registrar treated that as one transaction and was not willing to register any one until all the seven purchasers had paid Rs. 2 each, there was only one offence and no question of misjoinder arose. 13 C. W. N. 1062; 1 Cr. L. J. 35, 10 C. W. N. 520 Ref.

S. 235. Same transaction, what is ?—contd.

—when the accused is punished for murder or voluntarily causing grievous hurt with a dangerous weapon, he cannot also be fined for rioting when all the offences formed part of the same transaction. Rat. Un. Cr 493.

—ill, (a) (b) and (c) refer to cases where the different offences form parts of one continuous series of acts, ill, (e) and (f) to cases where a lapse may lapse between the several intent is common to all those where several distinct offences
15 B. 691

—though the words of the sec are ambiguous, the illustrations seem to suggest that the persons to be jointly tried must have been associated from the first in the series of acts which form the same transaction, i e., the association of the accused persons must be continuous from start to finish. 29 B. 449, 31 C. 1053 : 8 C W. N. 715.

—defamation and using criminal force may form the same transaction. 3 Bom L R. 673

—causing grievous hurt to a person who died of the injuries and making false entries in the official records attributing another causa for the death form one transaction. 14 Bom. L. R. 41.

—criminal misappropriation and falsification of accounts in order to screen the misappropriation is one transaction 40 C. 318, 19 Cr. L. J. 987 (Pun.), so also criminal breach of trust and falsification of account made to conceal the act of misappropriation may be tried as a part of same transaction 1929 Lah. 843 : 1929 Cr. C. 571 : 11 Lah. L. J. 384 : 30 Cr. L. J. 958. 118 I. C. 654.

—a charge of receiving stolen property and a charge of cheating may form one transaction if a common purpose ran through these acts. 43 M. 411

—where there were three different unlawful assemblies at three different villages each with a different common object but all in pursuance of a common purpose or design of preventing the police officers from searching a place, the acts of all the accused were parts of the same transaction. 20 Cr. L. J. 145.

—for the purposes of ss. 235 and 239 the acts need not have been committed on the same occasion but it is sufficient that though separated by a distinct interval of time they are closely connected by continuity of purpose, or progressive acts towards a single object. Where in assertion of a right over certain lands there were acts of trespass on two consecutive days for cutting and gathering crops thereon a joint trial for acts on both the days is not bad. 1925 Cal. 580 : 84 I. C. 849 : 26 Cr. L. J. 369.

Same transaction, what is not ?

—a fight between two parties cannot be held to be one transaction. 10 C. 538.

—theft and dishonestly receiving stolen property from the thief cannot be regarded as an offence committed in the same transaction 1 C. W. N. 35, 29 B. 449, 33 C 1256. 10 C. W. N. 912 :

S. 235. Same transaction, what is not?—*contd.*

3 C. L. J. 412, 16 C. W. N. 1105 : 15 C. L. J. 517 *Ref.* (6 C. L. R. 245, 6 Bom. L. R. 517) *Dis.* 1929 Lah. 142 : 29 Cr. L. J. 1080 : 112 I. C. 581.

—separate retainers by different persons of separate articles at different places of one dacoity cannot be said to be in the course of same transaction. 33 C. 1256, 25 M. 61 P. C. *Fol.* 13 C. W. N. 418, 29 B. 449, 9 C. W. N. 1027.

—even though a person is in possession of stolen property belonging to different owners he cannot be convicted of several offences of theft in respect of property identified by each owner unless it is proved that they were received by him at different times. 45 A. 465 : 21 A. L. J. 359.

—in a conviction under a 307 a charge under a 406 cannot be joined as the two acts did not form one series of transactions. 6 A. L. J. 697 : 10 Cr. L. J. 291

—when an offence under a 470 committed against a firm was complete before the accused cheated the Railway Cy. the two offences were not committed in one transaction. 13 C. W. N. 1089 : 10 Cr. L. J. 476, 39 C. 453. 15 C. W. N. 463 *Dist.*

—an offence against property is not an offence against the property in the abstract but it is an offence against the property of a particular owner or possessor, so in case of unlawful assembly and rioting resulting damages to several holdings separate offences may be charged in respect of each separate holding. 1929 Pat. 710 : 1929 Cr. C. 582.

—two occurrences, one of obstructing the execution of the decrees and the other of assaulting the *tashildar* in the *Kutchery* of the D. Hr. were held not to form one transaction. 13 C. W. N. 1113 : 10 Cr. L. J. 452, but see 6 M. L. T. 11 : 11 C. L. J. 30.

—preparation of different false balance sheets by a Company for different years on quite distinct and separate acts does not form same transaction. 21 Bom. L. R. 732.

—kidnapping a child and assaulting the child's mother on a subsequent day do not form same transaction. 26 M. 454 : 2 Weir 296, 27 C. 1041 F. B., 38 A. 661.

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25 M. 61 : 5 C. W.

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attention should be paid in the case as put forward on behalf on the prosecution and the matter should then be dealt with strictly in accordance with the allegation which the prosecution desired to prove. 40 C. L. J. 559.

—the offence of hiring a person to take part in a riot is certainly a separate and distinct offence from riot itself, and ordinarily the hiring and the riot would be separate transactions. 85 I. C. 818 : 26 Cr. L. J. 594.

—where two acts were committed on different dates and there was no connection between the two so as to make them the same transaction, a joint trial was illegal. 21 A. L. J. 859.

S. 234. Same transaction, what is not?—contd.

—four distinct offences committed at different times at different places and against different persons do not form the same transaction 18 Cr. L. J. 739 (Pat.)

—joint trial of two persons on charges under ss. 500 and 501 I. P. C. and conviction under s. 505 I. P. C. were held to be illegal. 50 C. 159 : 71 I. C. 670 : 24 Cr. L. J. 206 : 36 C. L. J. 287.

—criminal mis-appropriation and falsification of accounts relating to another distinct act of misappropriation do not form the same transaction. 19 Cr. L. J. 987 (Lah.)

—where the accused was charged under ss. 304 A., 337 and 338, under ss. 465 and 471 or s. 193 I. P. C. in the alternative for forging entries or to conceal his offence of criminal negligence, there was misjoinder of charges. 1925 Sind 233.

—an accused may be separately tried and convicted of two false statements on different subjects in the same deposition. 51 B. 310 : 1927 Bom 177 : 100 I. C. 931 : 28 Cr. L. J. 373 : 29 Bom. L. R. 170, Ratanlal 336 *Rel on*

—five murders committed in one day, three in one village in the forenoon and two in another village in the afternoon, are not committed together as to represent a series of acts forming the same transaction and cannot be tried together. 17 A. L. J. 614.

—preparation of false sheet for different years constitute separate offences which cannot be said to form one transaction. 21 Bom L. R. 732.

—where prosecution under s. 193 I. P. C. for making contradictory statements was withdrawn, subsequent prosecution for an offence under s. 183 I. P. C. was not barred by s. 403 Cr. P. C. 30 Bom L. R. 342 : 109 I. C. 346 : 1928 Bom. 177. 29 Cr. L. J. 522.

Objection as to misjoinder of charges.

—an objection as to misjoinder of charges, although not taken in either of the lower courts, can for the first time be taken in the H. C. and there must be a retrial. 19 C. L. J. 633 : 15 Cr. L. J. 472.

When some of several offences require sanction.

—when a complaint combines two offences of which one does not require sanction, the court must investigate that offence although no sanction is obtained. 81 I. C. 176 : 21 A. L. J. 915.

—if in the course of same transaction several offences are committed some requiring sanction and others not, the accused can be tried for the offences not requiring sanction where no sanction has been given for the offences which require sanction. 31 M. 43.

—there is no reason why, because the accused might have been charged with an offence for the prosecution of which the sanction of the Government is required under s. 196 A, they should not be charged with and tried for offences in respect of which no sanction is required. 26 C. W. N. 680 : 35 C. L. J. 279, 42 C. 957 : 19 C. W. N. 676 : 21 C. L. J. 331, 25 B. 90, 31 M. 43.

S. 236. (Where it is doubtful what offence has been committed).

—this section is only applicable to cases which come within the scope of section 236. 53 C. 466 30 C. W. N. 432; 1926 Cal. 581; 27 Cr. L. J. 676; 94 I. C. 270.

—the application of s. 237 is restricted to the case mentioned in s. 236. Where there is no doubt as to the offence committed s. 236 or s. 237 does not apply 18 C. L. J. 574 15 Cr. L. J. 41, 1930 All. 481. 124 I. C. 353; 31 Cr. L. J. 716; 1930 Cr. C. 701

—if a case falls under s. 237 Cr. P. C. it is to be regarded as a case mentioned in s. 236 Cr. P. C. 1927 Oudh 196; 28 Cr. L. J. 460. 101 I. C. 492; 2 Luck 444

—the doubt referred to in sec. 236 must be a doubt as to the application of the law to the proved facts and the sec. has no application where there may be a doubt as to the facts which constitute one of the elements of the offence 85 I. C. 116; 26 Cr. L. J. 594; 1925 Cal. 903.

—this section applies to cases in which doubt arises on a matter of law, 11 P. R. 1887, 1927 Rang. 254. 28 Cr. L. J. 759. 103 I. C. 639, and not when facts are doubtful and alternative finding is illegal, 7 N. W. P. H. C. R. 137, 12 C. W. N. 530; 7 Cr. L. J. 362, Rat. Un. Cr. 20, 21 C. 955, 5 S. L. R. 16, 1927 Rang. 254; 8 Bur. L. J. 83; 103 I. C. 839; 28 Cr. L. J. 759.

—there is nothing illegal in charging an accused under s. 303. I. P. C. and alternatively under s. 201 I. P. C. Case laws discussed, 26 C. L. J. 909; 86 I. C. 973.

—but such alternative charge does not hold good where the doubt in the mind of the Judge is not whether on the facts proved the accused's act fell within the purview of section 302 or sec. 201 I. P. C. but whether there was sufficient proof that the accused had in fact committed the murder of the deceased or had merely caused evidence of murder to disappear, such a doubt being a doubt as to facts. 1913 P. R. 11.

—the offence under s. 457 I. P. C. is in some cases a minor offence to the offence under s. 395, so there may be alternative charges of these two offences. 50 C. L. J. 467; 1930 Cal. 139; 1930 Cr. C. 139.

—this sec. does not relate to distinct acts, but to single act or series of acts where the facts being ascertained it is doubtful which of the several sections is applicable. 43 P. R. 1887, 1923 A. 285

—this section refers to cognate offences such as theft and criminal breach of trust or theft and receiving of stolen property, 1889 P. R. 26 but does not relate to offence of so distinct a character as murder and theft. 1888 A. W. N. 95 or offences under ss. 182 and 211 I. P. C. 1910 P. R. 20.

—an accused charged with an offence under s. 405 I. P. C. may be convicted for an offence under s. 403 I. P. C. when the facts so indicate. 30 Bom. L. R. 1270; 1928 Bom. 521.

—so a charge of murder may be joined in the alternative with a charge of causing evidence of murder to disappear. 25 Bom. L.

S. 236. (Where it is doubtful what offence has been committed)—*contd.*

R. 231, 4 S. L. R. 474, or a charge for an offence under s. 489 A. (counterfeiting a currency note) may be alternatively joined with a charge for an offence under s. 415 (cheating). 15 A. L. J. 587.

—it is for the jury to decide whether charges under ss. 147 and 304 spring out of one and the same incident or out of two entirely different incidents and the legality of the charges under both the sections depends on the decision of the jury. 1929 Cal. 298; 119 I. O. 139; 30 Cr. L. J. 1015.

—alternative charge can be framed in respect of offence under the Penal Code and other special law. 50 C. 564; 72 I. O. 372; 45 C. 727, 2 P. L. T. 31, *contra*. 5 S. L. R. 16.

—this sec. contemplates a state of facts constituting a single offence, where it is doubtful whether the act or acts involved may amount to one or another of several cognate offences. 23 C. 174 p. 178, 5 S. L. R. 16.

—this section applies to cases falling within the scope of s. 236. Where a charge is for abetment of forgery, the offence is complete when the document is written and signed. The user of the document being a subsequent act is a distinct and different offence for which the accused is entitled to be separately charged. The offence of abetment of forgery cannot be charged with using forged document. 53 C. 466; 30 C. W. N. 432; 94 I. O. 270; 27 Cr. L. J. 606; 1926 Cal. 581.

—the offences mentioned in this sec. are not in fact offences of the same kind, but offences of different kinds arising out of a "single act or set of acts" and committed at one and the same time. 9 C. 371; 11 C. L. R. 522.

—this sec. authorises a charge in the alternative when it is doubtful which of the several offences, the facts which can be proved, will constitute and not where there may be doubt as to the facts which constitute one of the elements of the offence. 21 C. 955 p. 973.

—if the M. desires to charge the accused in the alternative he must frame two separate alternative charges; alternative charges under two sections cannot be combined together in one head of the charge. 1929 Rang. 209; 30 Cr. L. J. 750. 1929 Cr. C. 356; 117 I. O. 244; 7 Rang. 96.

—alternative charges in case of contradictory statements to the Police and the Court should not be encouraged and is justifiable only when the prosecution is unable to prove which of the contradictory statements was false. 27 P. It. 1890, 2 Wair 300, the accused might have made true statements in perfect good faith and yet quite irreconcilable. 28 B. 533.

—if charges are framed cumulatively, and such framing of charge is illegal, the illegality cannot be cured by saying that if the charges had been framed alternatively it would have been valid. 49 C. 555.

—but a joint trial for offences under ss. 380 and 414 I. P. C. is legal even though the charges are framed cumulatively and not

S. 236. (Where it is doubtful what offence has been committed)—*contd.*

alternatively. 1929 Pat. 669: 1929 Cr. C. 413: 8 Pat 731: 122 I. C. 146: 31 Cr. L. J. 362.

—ss. 236 and 237 are merely provisions against the defect of justice on technical grounds; when an offence is proved by the evidence but its legal definition is doubtful or has been incorrectly given in the charge sections 236 or 237 may be resorted to. They really deal with cases not covered by the language of s. 235, 14 Cr. L. J. 135; 9 N. L. R. 26.

—where the accused are charged with one offence and it appears in evidence that they have committed a different offence for which they might be charged, in order to justify a conviction no separate charge need be framed. 1927 Oudh 196: 28 Cr. L. J. 460: 2 Luck. 444: 101 I. C. 492: 4 O. W. N. 442.

Sentence.

—in an appeal against a conviction for murder the court has power to convert the sentence into one of an offence against property. 4 Lab. 373.

—when the conviction is in the alternative, the court should pass the maximum sentence provided for the lesser of the two alternative charges. 15 A. L. J. 587, 1903 P. L. R. 63

S. 237 (when a person is charged with no offence he can be convicted of another).

Applicability of the section.

—s. 237 must necessarily be limited in its operation to cognate offences. 99 I. C. 861: 1927 Nag. 163: 28 Cr. L. J. 189.

—ordinarily a person cannot be convicted at a Session trial of an offence with which he has not been charged. There are some exceptions to this rule which are to be found in ss. 237 and 238 Cr. P. C. 85 I. C. 818: 26 Cr. L. J. 594: 1925 Cal. 903.

—the application of s. 237 is restricted to the case mentioned in s. 236. Where there is no doubt as to the offence committed s. 236 or 237 does not apply. 18 C. L. J. 574: 15 Cr. L. J. 41: 18 C. W. N. 1276

—s. 237 does not apply to a case where the true nature of the offence is not open to reasonable doubt. 2 Weir 301

—where charges are not *ejusdem generis* i. e. of the same nature ss. 236 and 237 do not give the M. power to amend them at the last stage. 29 B. 51 p. 71.

—joint trial and charge under one section and conviction under another, with the aid of assessors was held to be legal under ss. 236 and 237 Cr. P. C. 30 C. W. N. 581: 41 C. L. J. 437: 58 I. C. 3: 27 Bom. L. R. 707: 26 Cr. L. J. 1059: 48 M. L. J. 643: 1925 P. C. 130.

—the legality of a conviction for an offence not charged depends on whether reliance is placed on s. 237 or whether the different offence of which the accused has been convicted is one for

S. 237. Applicability of the section—contd.

which she might have been charged under s. 236 Cr. P. C. 50 C. 564 : 72 I. C. 372.

Conviction for different offences when legal and when illegal.

—where the facts which it was necessary to prove and on which evidence was given on the charge upon which the accused is actually tried are the same as the facts upon which he is to be convicted to the substantive offence a conviction can be upheld upon a charge which was not expressly formulated. 1929 Pat. 11 : 113 I. C. 676 : 30 Cr. L. J. 205.

—this sec. and sec. 236 refer to cognate offences but do not relate to offences of so distinct a character as murder and theft. 1888 A. W. N. 95, 99 I. C. 861 : 1927 Nag. 163 : 28 Cr. L. J. 189.

—a person charged with rape cannot be convicted of kidnapping. 8 Bom. L. R. 120. 3 Cr. L. J. 240.

—a person charged with dacoity, cannot be convicted of dishonestly receiving stolen property which has not been shown to be a part of the property taken in the dacoity. Ret. Un. Cr. 34. 95 P. L. R. 1904, 5 C. 871, 22 C. 1006, 8 B. 200.

—a person charged with dacoity cannot be convicted of an offence under s. 325 I. P. C. 1928 Oudh 373 : 29 Cr. L. J. 763 : 110 I. C. 795.

—a person charged and tried under s. 411 may, without altering the charge, be convicted under s. 379. 1888 A. W. N. 116, 17 M. L. J. 219 : 5 Cr. L. J. 479.

—if an accused is charged under ss. 301 and 325 he may be convicted of an offence under s. 323 though he was not charged with it. 34 C. 315, 698.

—where the accused were charged under a. 302 I. P. C. for murder and on evidence they were found to be guilty of an offence under s. 201 I. P. C. for causing the evidence of crime to disappear and was convicted under the latter section, the conviction was held to be correct. 30 C. W. N. 581 : 41 C. L. J. 437 : 88 I. C. 3 : 27 Bom. L. R. 707 : 26 Cr. L. J. 1059 : 48 M. L. J. 643 : 1925 P. C. 130 108 I. C. 905 : 29 Cr. L. J. 457.

—following the above P. C. case where the accused was charged under s. 302 and in the alternative under s. 201 I. P. C. and was committed under the latter section, the charge under s. 302 not being made out the conviction was held legal. 30 C. W. N. 816 : 96 I. C. 867 : 27 Cr. L. J. 1011 : 45 C. L. J. 581.

—but when once the trial had been begun according to the provisions relating to warrant cases under Ss. 342 and 392 I. P. C. but after recording of the evidence for the prosecution the M. came to the conclusion that the offence was not one under that section but under a. 341 I. P. C. and refrained from framing a charge and tried the case summarily the conviction was illegal. 99 I. C. 1027 : 1927 A. 270 : 28 Cr. L. J. 237 : 19 A. L. J. 6 Ref.

S. 237 Conviction for different offences when legal and when illegal—*contd.*

—where in a charge under s. 326 read with s. 149 all necessary ingredients for a conviction under s. 326 read with s. 31 were present before the M. the latter was right in convicting the accused 113 I. C. 676 : 1929 Pat. 11 : 30 Cr. L. J. 205.

—an accused charged under s. 350 I. P. C. may be punished under s. 54 A of the Calcutta Police Act 50 C. 561 : 72 I. C. 372, following this case it has been held that where the accused was charged under ss. 341 and 411 I. P. C. he could be punished under s. 54 A Calcutta Police Act as the latter offence was summarily triable and no specific charge was necessary. 33 C. W. N. 477 : 49 C. L. J. 566 : 1929 Cal. 401 : 1929 Cc. C. 31.

—but where a person has been charged solely under s. 34 Police Act he cannot be convicted under s. 220 I. P. C. as he has a right to be told what he is charged with. 91 I. C. 838, 1926 All. 227 : 27 Cr. L. J. 152 : 24 A. L. J. 168.

—a person charged under s. 147 and under Ss. 304 and 323 read with s. 149 cannot in the event of charge not being made out be convicted under s. 325, 34 C. 698 : 11 C. W. N. 666.

—a person cannot be convicted of hurt unless he is charged with hurt. Where in a trial for rioting with common object of hurt, charge of rioting could not be sustained; further trial for hurt in the absence of direct charge vitiates trial. 1930 Mad. 631 : 1930 Cr. C. 576, (27 C. 566, 1925 Mad. 1 F.B.) *Ref.*, 47 M. 746 F. B. *Dist.*

—when a person is charged by implication under s. 149 I. P. C. he cannot be convicted of the substantive offence. 16 C. W. N. 1077, *contra*. 47 M. 746. F. B.

—in a trial of the accused on a charge of rioting when there is absence of charge for assault, conviction for assault is sustainable under s. 236 and 237 Cr. P. C. provided the accused is not misled in his defence. 1929 Pat. 712 : 30 Cc. L. J. 891 : 10 Pat. L. T. 875 : 118 I. C. 323 : 1929 Cr. C. 584.

—where the accused is charged only under s. 395 while he could be charged with dacoity and theft under ss. 395 and 403 I. P. C. a conviction under s. 403 I. P. C. is legal under s. 237 Cc. P. C. and can be justified by s. 238 Cr. P. C. 1929 Sind. 147 : 118 I. C. 193 : 1929 Cr. C. 315 : 30 Cr. L. J. 875.

—there is no reason why, because the accused might have been charged with an offence for the prosecution of which the sanction of the Government is required under s. 196 A., they should not be charged with and tried for offences in respect of which no sanction is required. 26 C. W. N. 680 : 35 C. L. J. 279, 42 C. 957 : 19 C. W. N. 676 : 21 C. L. J. 331, 25 B. 90, 31 M. 43, 81 I. C. 178 : 21 A. L. J. 915.

—in case of distinct offences, trial should be separate. 1 C. L. J. 475 : 2 Cr. L. J. 393, 28 C. 104.

—a person charged and tried under s. 124 A. in respect of an article in newspaper may be convicted under s. 153 A. even though not charged with it. 33 B. 77, 221.

S. 237. Conviction for different offences when legal and when illegal—contd.

—when the common object proved is different from the common object charged, the accused cannot be convicted. 2 C. L. J. 516, 6 M. L. T. 17 11 Cr. L. J. 30, 36 C. 865.

—but when the difference is slight and the accused is not prejudiced, the conviction is good. 35 C. 384, 11 C. 106, 22 C. 391, 36 C. 188 : 12 C. W. N. 944

Power of appellate Court.

—where necessary facts have been established the appellate court may alter the charge on finding. 26 C. 863, 41 C. 537, 1916 M. W. N. 267.

—the appellate Court may substitute a conviction for a lesser offence than that which has been held to have been committed by the court of first instance. 1927 Oudh. 296 : 28 Cr. L. J. 673 : 103 I. C. 40 1 Luck 159, 1925 P. C. 130 : 30 C. W. N. 581 : 41 C. L. J. 437. 88 I. C. 3 P. C. Fol 1927 All 35 Dist.

—but conviction under ss. 326, 149, 141 cannot be altered by the appellate court to a conviction under Ss. 323 under which no charge was framed 17 C. W. N. 63 (note), and where the accused was charged under s. 147 the appellate court could not acquit him under that section and convict under s. 353., 18 C. W. N. 1274, 1276

—the Appellate Court may alter the charge or finding and convict the accused for an offence which the acts committed by him properly constitute, provided the accused be not prejudiced by the alteration in the finding. 31 C. W. N. 527 : 101 I. C. 180 : 28 Cr. L. J. 404 : 1927 Cal. 520 : 51 C. 476.

—where the accused were convicted by the Magistrate under s. 326 read with s. 149 I. P. C. but on appeal the Sessions Judge altered the conviction to one under s. 326 read with s. 34 I. P. C. held on the facts of the case that as the accused were not prejudiced the conviction was not invalid for want of specific charge. 7 Pet. 758

—where the accused was convicted by the trial Magistrate of an offence under s. 326 I. P. C. and on appeal the Sessions Judge altered the conviction to one under s. 326 I. P. C. and convicted the accused of an offence under s. 323 I. P. C. the sentence, held, that the conviction was not invalid for want of specific charge, distinct and the accused having been prejudiced the conviction could not be sustained. But if notwithstanding the error of the trial Court the accused by his defence endeavoured to meet the accusation of the commission of the offence under s. 143 I. P. C. then the appellate court might alter the charge or finding. 31 C. W. N. 527 : 101 I. C. 180 : 1927 Cal. 520 : 28 Cr. L. J. 404 : 51 C. 476.

—conviction for different offences from that for which the accused was charged must be quashed if on the perusal of the record it appears that the accused was prejudiced. 84 I. C. 708 : 1925 Cal. 591 : 26 Cr. L. J. 356.

S. 237. Power of appellate Court—contd

—where the accused was acquitted of an offence under s. 302 I. P. C. but in revision preferred by the Govt. he was found guilty under s. 193 I. P. C. and he was not prejudiced, held that acting under s. 423 (1) (a) Cr. P. C. the H. C. could avail itself of the provisions of s. 237 Cr. P. C. 32 B. 385 1918 Bom. 130; 108 I. C. 591; 29 Cr. L. J. 403; 30 Bom. L. 12, 330.

S. 239. (When offence proved included in offence charged.)

Amendments and scope of the section,

Sub sec. (2) of s. 237 has been transferred to this sec. and has been re-numbered as sub-sec (2A)

—the amendment of the section by the insertion of the clause 2A allows an accused person charged with a substantive offence to be convicted of an attempt to commit that offence though no separate charge is framed. 48 M. 774 85 I. C. 339. 1925 M. W. N. 113. 1925 Mad. 450 26 Cr. L. J. 755

—but under the same clause it is necessary that when an accused is charged with substantive offence he cannot be charged with abetment without a charge being framed. So an accused charged under s. 420 I. P. C. cannot be convicted under ss. 420 and 114 I. P. C. 44 C. L. J. 216; 99 I. C. 34; 1927 Cal. 63 28 Cr. L. J. 2.

—this is an enabling sec. and not imperative one. Rat. Un. Cr. 307.

Charge for substantive offence but conviction for attempt to commit that offence.

—an accused person charged with a substantive offence may be convicted of an attempt to commit that offence without a separate charge being framed. 48 M. 774; 85 I. C. 339; 1925 M. W. N. 113; 1925 Mad. 480; 26 Cr. L. J. 755, 113 I. C. 881; 30 Cr. L. J. 224, the test seems to be that all the legally necessary elements of the offence of which the accused is convicted are also necessary elements of the offence with which he is charged. 113 I. C. 881; 30 Cr. L. J. 224.

Charge for substantive offence but conviction for abetment.

—a person cannot be convicted, on the H. C. R. 240, 33 44 C. L. J. 216; 99 I. C. 34; 1927 Cal. 63; 28 Cr. L. J. 2. Ref., also, So where a person was charged under s. 420 I. P. C. but was convicted under ss. 420 and 114 I. P. C. the conviction was illegal. 44 C. L. J. 216; 99 I. C. 34; 1927 Cal. 63; 28 Cr. L. J. 2.

—a person charged with a substantive offence of that offence, 1924 Bom. 432, 182 Contra. 23

S. 238. Charge for substantive offence but conviction for abetment—contd.

M. L. J. 722, 22 Cr. L. J. 161; 1921 P. W. R. 11 and it has been held by the Calcutta H. C. that it cannot be laid down as a universal rule that in no case whatsoever a person can be convicted for abetment when he has been charged of substantive offence alone. The answer depends on the facts of each case and on the fact whether prejudice is caused to the accused or not. 1928 Cal. 466; 112 I. C. 677; 29 Cr. L. J. 1093, followed in 50 C. L. J. 472; 31 Cr. L. J. 570; 34 C. W. N. 198; 123 I. C. 748; 1929 Cal. 807; 1929 Cr. C. 595 which distinguished the cases reported in 33 M. 264 and 1924 Bom. 432; and referred to the cases reported in 11 B. H. C. R. 240, 42 C. 1094, 1927 All. 55, 1927 Cal. 35, 1925 P. C. 130, 1927 Cal. 63.

—If the evidence adduced in support of the charge for the substantive offence given notice to the accused of all the facts constituting abetment, he can be convicted of abetment. 50 C. L. J. 472; 34 C. W. N. 198; 31 Cr. L. J. 570; 123 I. C. 748; 1929 Cal. 807; 1929 Cr. C. 595.

Charge for abetment, conviction for substantive offence.

—an accused may be convicted of a substantive offence though he was charged with abetment of that offence only. 1912 P. W. R. 17.

Charge for minor offence, conviction for major offence.

—conviction for a major offence on a charge of minor offence is illegal. 1 Bom. L. R. 513.

Charge for major offence, conviction for minor offence.

—the words "minor offence" ought to be taken in their ordinary sense and not in technical sense. So an offence under s. 365 is minor as compared with those under Ss. 366 and 376, 22 C. 1006.

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—a grievous hurt cannot be regarded as minor to or included in a charge under Ss. 325, 149 I. P. C., 34 C. 698; 11 C. W. N. 666, 6 C. W. N. 98.

—dishonestly receiving stolen property cannot be considered as minor offence included in dacoity; so an accused charged with dacoity cannot be convicted for dishonestly receiving stolen property. 89 I. C. 449; 26 Cr. L. J. 1351.

—when the accused is charged under s. 430 I. P. C. he can be convicted under s. 425 I. P. C., 86 I. C. 58; 1925 Pat. 389; 26 Cr. L. J. 682; 6 Pat. L. T. 39.

—conviction for minor offence, when evidence is insufficient to prove major offence, is legal. 34 C. 325, 34 C. 698; 11 C. W. N.

S. 236. Charge for major offence, conviction for minor offence—*contd*

666, 44 C. 358, 18 C. W. N. 992, 43 B. 619, 34 C. 698, 41 C. 662, 16 C. W. N. 1077, 47 M. 746 F. B., 17 B. 369, Rat. 293, 7 M. 454, 1928 Oudh 402 : 111 I. C. 573, 29 Cr. L. J. 893.

—In the trial of an accused by a Sessions Judge with the aid of assessors for an offence so triable it is competent to the Judge to convict the accused of a minor offence which is triable only by a jury. 45 B. 619, 27 Bnm. L. R. 1416.

—when the charge is for major offence reference by the Judge to minor offence in his summing up to the jury and conviction thereunder is not illegal, 41 C. L. J. 239 : 33 C. 599 : 1926 Cal. 1059, 1929 Cr. C. 410, 1929 Nag. 295.

—a person charged for offences under sec 147 I. P. C. and for offences under secs 304, 325 and 323 read with sec 149 cannot in the event of charges not being made out be convicted of an offence under sec. 325. 34 C. 698, 11 C. W. N. 665

—person charged with rioting may be convicted of assault, 7 M. 454, but not of criminal trespass and hurt. 18 Cr. L. J. 860 (Mad)

—a person charged with dacoity can be legally convicted for hurt. 1929 M. W. N. 185

—a person can be convicted under s. 412 I. P. C. in a charge under s. 395, 1 B. 50

—a person summoned for an offence under s. 278 I. P. C. may be convicted under s. 290 I. P. C. 1928 Oudh 402 : 29 Cr. L. J. 893 : 111 I. C. 573.

—a person was charged under s. 452 I. P. C. but was convicted for an offence under s. 426 I. P. C., the procedure was sanctioned by s. 238 Cr. P. C. 81 I. C. 911 : 25 Cr. L. J. 1087.

—when the accused is charged with robbery he cannot be convicted of house-breaking by night and theft. Rat. Un. Cr. 211.

—when the accused is charged with murder, he cannot be convicted of kidnapping. 2 Weir 302.

—a person charged with dacoity and riot cannot be convicted of criminal trespass, 23 W. R. Cr. 59 or of robbery, 4 Lah. 373

—a charge for rioting does not include as a minor offence any specific act of violence by an individual authorising his conviction for assault. 1929 Pat. 712 : 30 Cr. L. J. 891 : 10 Pat. L. T. 875, 118 I. C. 323 : 1929 Cr. C. 584

—a person charged for an offence under s. 304 and with s. 149 cannot be convicted for an offence under s. 304 if he is convicted for another person. 820.

—a person charged for an offence under s. 304 and with s. 149 cannot be convicted for an offence under s. 304 if he is convicted for another person. 820.

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—a person charged for an offence under s. 304 and with s. 149 cannot be convicted for an offence under s. 304 if he is convicted for another person. 820.

S. 238. Charge for major offence, conviction for minor offence—*contd.*

—when once the trial has been begun according to the provisions of the warrant cases it is not open to the Magistrate to alter the *sec* and to convict the accused without framing a charge. 1927 All. 270, 99 I C 1027; 28 Cr. L. J. 227, 19 A. L. J. 6 Ref.

Specification of intention or object of crime.

—it is not necessary to specify the criminal intention, it is sufficient if a guilty intention is proved such as is contemplated in s. 441 I. P. C., 44 C. 358, *contra* 3 P. L. T. 322; 65 I. C. 546, 16 C. W. N. 696.

—although it is not necessary under s. 456 I. P. C. to specify any particular offence intended to be committed, when a particular offence is specified under s. 457 I. P. C. the court has no power to convict the accused of house-breaking with some other offence (under s. 456) 16 C. W. N. 696, *contra* 44 C. 358.

—a person charged under s. 457 I. P. C. for criminal trespass with intent to commit theft can be convicted of an offence under section 456 I. P. C. for criminal trespass with intent to carry on intrigue with a woman. 44 C. 358.

—so also if the common object of an unlawful assembly had been to commit criminal trespass, a person charged under section 147 I. P. C. for being the member of the unlawful assembly can be convicted under s. 447 I. P. C. without a charge having been framed because the latter offence is a minor one and is included in the former, 18 C. W. N. 992, but in the same case it has been held that when the common object in a charge under s. 147 was described to be taking forcible possession of complainant's land and assaulting him, the accused could not be convicted of criminal trespass without fresh charge.

Framing of charge—Alternative charge—order of examination of witness.

—the accused person is entitled to know with certainty and accuracy the exact nature of the charge brought against him and unless he had this knowledge, he must be seriously prejudiced in his defence. 3 P. L. T. 322.

—when the trial has commenced on a charge under s. 66 only a formal addition of a fresh charge under s. 493 at a late stage of the trial is opposed to the spirit of the s. 31 B. 218, 20 A. 166.

—an alternative charge of rape and adultery with respect to the same woman and on the same facts is illegal. 5 A. 233, 27 M. 61, 29 C. 415.

—witness for the prosecution ought, as far as possible, to be called in the order of events which they are called to prove and in chronological order. The Judge without dictating to the prosecution should suggest alterations on proper occasions. 1923 Cal. 579.

S. 238. Power of appellate Court.

—when the offence is composite the appellate court can record a new finding and sentence on any element of the composite offence. Rat Un. Cr. 293, 1 B 50

—the powers under this sec. may be exercised by the appellate court. An appellate court can alter a conviction for major offence into a conviction for a minor offence. 23 A. L. J. 213.

—where the jury acquitted the prisoners of certain offences and found some other facts, upon which the jury could have convicted them of some other offence but did not convict, the H. C. had power to convict the prisoners of the latter offence 3 C. 189

—a conviction of rape cannot be converted by the appellate court into that of kidnapping 8 Bom L. R. 120; 3 Cr. L. J. 240.

S 239 (What persons may be charged jointly.)

This sec. has been fully recast giving legislative sanction to the decisions of the High Courts though not conflicting

Applicability of the section.

—where a number of persons are tried for offences committed in the same transaction it is a question for the court in the exercise of its judicial discretion to say whether the accused should be tried together or separately. 38 C L J 309 F B.

—this is the last exception to s. 233 which lays down the general principle that every offence must be charged and tried separately. This is the only section authorising a joint trial of several persons under circumstances specified in the section 4 N L. R. 71

—wherever the applicability of the section is doubtful it is far better that it should not be applied and the accused should be tried separately. 1927 Mad 177. 33 M L T. 37. 51 M L J. 692

—to apply this section it is not necessary that there should be any proof of conspiracy amongst the accused. It is enough if there is identity of purpose, there need not be community of purpose 48 A. 325 93 L. C 237; 27 Cr L J 445; 1926 All 334

—ss. 233 to 239 apply to the trial of the accused and not to preliminary inquiries and commitments and the S J. is competent to try prisoners committed together as if there had been two or more commitments 26 M 592, 7 Bam. L. R. 457, Rat Un Cr 915, 42 M. 561, 11 W. R. Cr 16, 19 A. W. N. 206, 29 Cr. L. J. 379

—this sec. allows an abettor to be tried in the same trial as the principal. 15 C L J 692, 18 A. 350, but it depends on the facts of each particular case 9 C W. N. 121; 16 Cr. L. J. 348

—this sec. applies to inquiries under chap. VIII, 9 A. 452, 8 C. W. N. 180, 14 C. 358, Rat Un. Cr. 559, 585, 6 A. 214

—this sec. does not give committed outside jurisdiction governs s 239 Cr. P. C also. 1929 Cr. C. 487; 1929 M. W. N. 578

S 239. Clause (a)—Persons accused of same offence committed in the course of same transaction.

—the words "same offence" signify one and the same physical act of crime and not different acts constituting crimes called by the same name or punishable under the same section. When two persons give false evidences in the same case, although they depose on the same day regard to the same matter and almost in the same words, they do not commit the same offence, which cannot be tried jointly. *ent offences, which tried by them in the same transaction*

—the words "same offence" both the accused should have acted in concert or association, so when the allegation that either one or the other has committed the crime this section does not apply and the accused must be separately tried, 7 L. B. R. 68

—under s. 32 of the Evi. Act the expression "same offence" means the identical offence and not an offence of the same kind. 32 C. W. N. 1001.

—where there was no connecting link between the two persons found in possession of stolen properties and there was no suggestion that either or both of them were the original thieves and the only connecting link between them was that each of them retained some property stolen from the same complainant they cannot be tried together on a charge under s. 411 I. P. C., 20 A. L. J. 563, but if under similar circumstances the two accused were acting in concert and were in joint control of the stolen property their joint trial would not be illegal. 1 P. L. T. 431, 1 Pat. L. J. 64; 17 Cr. L. J. 234.

—the fact that the goods were stolen in one theft does not allow the joint trial of persons who received them. 17 Cr. L. J. 477 (A) 19 A. L. J. 815, 9 Lah. L. J. 100; 28 Cr. L. J. 459; 101 I. C. 491; 1927 Lah. 737.

—when two persons were charged jointly with criminal misappropriation or with respect to a certain sum of money it was held that two persons could not be guilty of misappropriation of the same parcel of money, one might be guilty of misappropriation and the other of abetment. It was also open to the court to frame charges in the alternative against each of the accused of misappropriation and abetment, 16 C. W. N. 600.

—joint trial of several receivers from different persons at different times and places although the articles might have been the proceeds of same theft or dacoity, is illegal. 19 B. 449, 25 B. 491, 33 C. 1256, 28 C. 104, 2 C. 23, 3 B. L. R. 20, 16 C. W. N. 912, 23 C. W. N. 463; 29 C. L. J. 212.

—joint trial of one charged under s. 201 and another under s. 301 is illegal. 85 I. C. 147; 1925 Cnl. 413; 26 Cr. L. J. 467.

—joint trial of offences of gaming and keeping a common gaming house arising from the same transaction is legal. 105 I. C. 825; 8 A. I. Cr. R. 406; 50 A. 412; 1928 All. 20; 28 Cr. L. J. 1001.

—joint trial of two persons for two separate acts, namely, that each obtained credit concealing the fact that he was an

S. 239. Clause (a)—Persons accused of same offence committed in the course of same transaction—contd.

undischarged insolvent, was held legal. 53 C. 929; 44 C. L. J. 350; 27 Cr. L. J. 1968; 1227 Cal. 149; 93 I. C. 116.

—joint trial of printer and publisher of a pamphlet for an offence under s. 124 A I. P. C. is legal. 1923 Bom. 139; 30 Bom. L. R. 320; 110 I. C. 234; 29 Cr. L. J. 643.

For other cases under this clause, see cases under Cl. (d) below.

Clause (b)—Abettor of offence.

—this sec. allows an abettor to be tried with the principal, 15 C. L. J. 692, 18 A. 350, but the discretion must be exercised having regard to the facts of each particular case. 19 O. W. N. 121; 16 Cr. L. J. 348.

—ordinarily the correct course is to try an abettor with the primary offenders, but there may be circumstance justifying separate trial 1929 M. W. N. 796, 57 M. L. J. 754; 30 L. W. 736.

—when one person induces another to cheat and the latter attempts to cheat in consequence, they may be tried together for abetment of and attempt at cheating 38 C. 453.

—s. 234 permits joinder of three charges against one accused and s. 239 read with s. 234 permits the joinder of two charges against one accused and the charges of abetment of those two offences against the other accused; but there is no provision which permits the joinder of a third charge against one accused with either or both of the first two charges against the other accused. So when one accused is charged with three separate offences and the other accused is charged with abetment of two of these offences but not of abetment of the third s. 233 Cr. P. C. stands in the way making the trial illegal 84 I. C. 463; 26 Cr. L. J. 319; 1925 Rang. 198.

—the scope of s. 239 cannot be extended by use of the provi-

1921 All. 246 32 A. 219 *const.*

—to a trial for murder it is an improper procedure to allow the principal accused to remain untried while trial is proceeded against persons supposed to have played a minor part in the commission of the offence. When some of the accused are principal offenders and others are accomplices they may be tried together under this clause 50 M. 274; 1926 Mad. 638, 91 I. C. 42; 27 Cr. L. J. 394

Clause (c)—Offences of the same kind—

—the joint trial of two persons for passing counterfeit coins as genuine on three different occasions to three persons on the same date is valid under this sub-section. 41 M. L. J. 130.

S. 239. Clause (d)—Different offences committed in the course of same transaction.

(1) Principle explaining the term "same transaction."

—the good test of what should or should not be regarded as the same transaction within s. 239, is the proximity of time, unity or proximity of place, continuity or design 35 C. L. J. 527, L. R. 73 : 8 Cr. L. J. 191, 21 S. L. 1927 Sind 39, it is substantia : 26 Cr. L. J. 29, 1923 All. 277.

—once charge of conspiracy is found, anything done in pursuance of the conspiracy can be tried at the trial for conspiracy for the offence of conspiracy and the offence committed in pursuance thereof, form one and the same transaction. 26 C. W. N. 680 : 49 C. 573 : 35 C. L. J. 279, (42 C. 957 P. 988 : 19 C. W. N. 676, 19 C. W. N. 672 : 21 C. L. J. 195, 42 C. 1153 : 21 C. L. J. 201) *fol.*, 1884 A. W. N. 52.

—in deciding whether offences are so committed as to form one and the same transaction the determining factor is not so much proximity in time as continuity and community of purpose and object 19 C. W. N. 676 : 23 C. W. N. 30 (note), 100 I. C. 965 : 1927 Lah 274 : 28 Cr. L. J. 357.

—the word "transaction" means carrying through and suggests not necessarily proximity in time, so much as continuity of action and purpose. 30 B. 49 : 7 Bom. L. R. 633, 18 P. W. R. 1908 : 8 Cr. L. J. 75.

—the "same transaction" implies oneness of purpose. 119 I. C. 532

—it is not possible to frame a comprehensive formula of universal application to determine whether two or more acts constitute the same transaction. 35 C. L. J. 527.

—the legality of a joint trial depends on the accusation and not on the result of the trial. 49 C. 573 : 26 C. W. N. 680 : 35 C. L. J. 279, 3 Rang. 95 : 89 I. C. 305 : 1925 Rang. 296.

—the charge need not contain the statement as to unity of transaction. It is the tenor of the accusation and not the wording of the charge that must be considered as a test. 30 B. 49 : 7 Bom. L. R. 633.

—to constitute same transaction association must be continuous from start to finish. 31 C. 1033 : 8 C. W. N. 715, 29 B. 449 : 7 Bom. L. R. 507, 30 B. 49, 10 P. R. Cr. 1906 : 4 Cr. L. J. 285.

—the question whether the offences specified in different charges were committed in the same transaction is substantially a question of fact and admission on a question of fact made by an accused person can be received and acted upon by the trial Court. 83 I. C. 509 : 26 Cr. L. J. 29 : 1923 All. 277.

—in case of several accused the court should draw up the charges with care and frame specific charges against the accused. 1920 M. W. N. 149.

S. 239. Clause (d)—(i) Principles explaining the term "same transaction"—*contd.*

—false statements by two witnesses on the same point in the same suit if form offences in the course of same transaction,—dissentient judgements of the Judges 51 R. 310 100 f. C. 941 1927 Bom. 177 29 Bom. f. R. 170 (25 I. A. 257, 5 Bom. H. C. 55, 4 Bom. L. R. 53, 36 C. 808, 14 Bom. L. R. 972, 30 B. 49) *Ref.* See other cases under sub-note (3)

—joint trial of different persons under ss. 368 and 366 I. P. C. is illegal as the two acts do not form part of the same transaction. 1929 Lah. 496, 1929 Cr. C. 57.

(2) Offences which are committed in the course of same transaction.

—before different offences can be said to have been committed "in the course of the same transaction" by different persons charged with the same it must be seen whether such persons had a common purpose resulting in actions which constitute a *conciens* of events ultimately leading to the commission of such offences 1927 Lah. 274 100 I. C. 965 28 Cr. L. J. 357

—for the purpose of determining whether or not offences were committed in the course of the same transaction the tests of unity of time and unity of place as regards the offences with which different persons are charged, are not always safe criterion. 1927 Lah. 274 : 100 I. C. 965 : 28 Cr. L. J. 357.

—where a number of persons are tried for offences committed in the same transaction it is a question for the court in the exercise of its judicial discretion to say whether the accused should be tried together or separately 38 C. L. J. 309 F. B.

—when one accused takes bribe through another they may be tried jointly as the offences form part of the same transaction. 7 Bom. L. R. 637

—where an association decides to boycott a person and shortly after some members take joint action to boycott that person, they act in furtherance of a common purpose and acts done in pursuance thereof can be the subject of a joint trial. 76 I. C. 830

—where two accused conspired together and cheated several villagers on the same day by asking to pay sums in excess of their assessment, it was same transaction. 20 Cr. L. J. 71. 43 B. 147, 23 C. W. N. 31 (note) 20 Cr. L. J. 122, 29 C. L. J. 31, 49 C. 573

—but mere allegation of conspiracy will not validate joint trial. 3 L. B. R. 231 : 4 Cr. L. J. 489, 26 M. 592, 1 L. B. R. 266, 1833 A. W. N. 188.

—where several persons were members of a secret society and conspired to wage war or deprive the King of the sovereignty of British India and collected arms and ammunition for that purpose and actually waged war, joint trial of all the accused for offences under ss. 121, 121 A. 122, 123 I. P. C. was held to be legal. 37 C. 467.

S. 239. Clause (d) — (2) Offences which are committed in the course of same transaction — *contd.*

—where six accused persons were jointly tried under s. 121 I. P. C. for having burnt police station, committed dacoity armed with weapons and it was found that one accused had joined the party of rebellion after two of the accused had left it but it was found that the rebellion was organised and continued under the leadership of one particular person whom the accused had followed, the joint trial was legal. 49 M. 74 : 1925 Mad. 690 : 90 I. C. 297 : 26 Cr. L. J. 1513 : 48 M. L. J. 308.

—joint trial of several persons for various offences committed in pursuance of a criminal conspiracy is legal. 26 C. W. N. 680 : 35 C. L. J. 179, 1930 R. 114 : 31 Cr. L. J. 387 : 122 I. C. 273.

—when the accused cheated by conspiracy together, they might be tried together. 43 B. 147 : 20 Cr. L. J. 71, 23 C. W. N. 31 (note), 29 C. L. J. 31, 49 C. 573.

—where twenty-two persons were cheated at one and the same time and place in pursuance of a conspiracy the offences were committed in the course of same transaction and joinder of the accused was legal. 23 C. W. N. (note) 31 : 29 C. L. J. 31, 49 C. 573.

—where the charges involve conspiracy between the accused they should be tried jointly. 16 A. 88 : A. W. N. 1894, 23.

—once charge for conspiracy is framed, anything done in pursuance of the conspiracy can be tried at the trial for conspiracy for the offence of conspiracy and offence committed in pursuance thereof form one and the same transaction. 26 C. W. N. 680 : 25 C. L. J. 279 (42 C. 957 P. 938, 19 C. W. N. 676, 19 C. W. N. 672 : 21 C. L. J. 195, 42 C. 1153 : 21 C. L. J. 201) *fol.*

—offences under ss. 121-A and 120-B I. P. C. may be jointly tried when they form part of the same conspiracy. 1927 Oudh 369 : 1 Luck. 389

—so long as the conspiracy continues the transaction which began with the forming of the common intention continues. 19 C. W. N. 706

—when offences were committed in the course of same transaction and the criminal breach of trust committed was in furtherance of a conspiracy to cheat, the accused might be tried jointly. 15 C. W. N. 463, 19 C. W. N. 181, 30 B. 49.

—where in the course of same transaction the offence of dacoity and two other offences of receiving stolen property are alleged to have been committed, joint trial is possible. 45 A. 223 : 71 I. C. 501.

—where a gang of dacoits assembled on a high way for robbing passers-by, and in the course of the dacoity several offences were committed by them, all these offences were held to be committed in the course of same transaction, it being immaterial whether all the members of the gang took an active part in each offence. 20 A. L. J. 926.

S. 239 Clause d - 2: Offences which are committed in the course of some transaction—contd.

—where two persons associated together to circulate on different occasions defamatory statements the object of both being to defame the complainant about the same matter they could be jointly tried. 113 I. C. 532 : 1933 Sind 62 : 1930 Cr. C. 126

—joint trial of thief and the receiver is legal 6 C. L. R. 215, 6 Bom. L. R. 3-1, 31 A. 331. contra, 1 C. W. N. 35, 21 C. W. N. 1111.

—to make the joint trial legal the receipt must be simultaneous with the theft, 3 P. R. Cr. 1903, 11 P. L. R. 1903, 2 Cr. L. J. 37, 17 P. R. Cr. 1903, 3 P. R. Cr. 1900 1 C. W. N. 35

—part receivers may be tried together when they are in concert 1 Pat. L. J. 61 : 17 Cr. L. J. 231.

—joint trial of several receivers from different persons at different times and places although the articles might have been the proceeds of same theft or dacoity, is illegal 29 B. 419, 15 B. 491, 33 C. 1256, 25 C. 104, 2 C. 23, 3 B. L. R. 20, 16 C. W. N. 912, 21 C. W. N. 453, 29 C. L. J. 212.

—where all the accused are charged jointly with theft and in the alternative with receiving stolen properties and are tried jointly the trial is not illegal having regard to ss. 237 and 531, 17 M. L. J. 212, 6 Cr. L. J. 470.

—receiver of stolen property and the purchaser from him cannot be tried together. 81 C. 313 : 25 Cr. L. J. 807 (c) : 1925 Cal 218

The above conflicting point relating to the joint trial of thieves and receivers of stolen property has been set at rest by the introduction of clause (e) in the section which provides that they may be jointly tried.

—offences under ss. 414 and 411 may be tried together if they form part of the same transaction having occurred at the same time and place. 6 Bom. L. R. 361, but when the transactions are distinct and separate or partly forming part of the same transaction and partly not, they cannot be tried jointly. 28 C. 104, 4 A. 147, 14 C. 395, 15 B. 491. This is no longer law on the face of the present amendment by the introduction of clause (f) in the section.

—offenders under ss. 240 and 243 I. P. C. may be jointly tried

31 C. 100 and it appeared
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 been admitted
 the trial way

out such procedure is good. 53 B. 479 : 1929 Bom. 296 : 1929 Cr. C. 115 : 51 Bom. L. R. 515, in this case some were charged under ss. 120 B, 161 and 163 I. P. C. and others under those sections and under s. 114 I. P. C.

—the offence of keeping a gaming house and the offence of playing therein arise out of the facts so inseparably connected together as to form one transaction 9 N. L. R. 64, 1916 P. 20 Cr. L. J. 768 (Pat), 20 A. L. J. 967.

S. 239, Clause (d)—(2) Offences which are committed in the course of same transaction—contd.

—a court therefore is justified in trying two accused persons under ss. 3 and 4 in the course of the same trial. 1929 All 937: 1929 Cr. C. 669 (1922 Lah. 458, 6 P. R. 1919 Cr. 1923 All. 88) *Rel. on* (1910 P. R. 5 and 1914 P. R. 35) *not fol Contra*, 1910 P. R. 5, 1914 P. R. 35.

—where it is proved that all the accused formed one gang and all the acts were directed to the common purpose and all of them were tried jointly and objection to the same was sought to be raised in revision before the H. C. for the first time, held that the joint trial was not illegal and did not prejudice the accused. 1927 Mad. 542. 1927 M. W. N. 185, (1925 M. W. N. 57, 27 C. 781, 45 A. 109) *Dist.*

—where two persons were for the same fact, namely that a fact that he was an undischarged good. 44 C. L. J. 350. 53 C. 929.

—this sec. allows an abettor to be tried with the principal. 15 C. L. J. 692, 18 A. 350, but the discretion must be exercised having regard to the facts of each particular case. 19 C. W. N. 121: 16 Cr. L. J. 348

—an approver whose pardon has been forfeited may be tried with the other co-accused. 6 A. L. J. 691: 1908 A. W. N. 259: 8 Cr. L. J. 445.

—where the accused and two others were charged under ss. 120—B and 489 A, B D. and the accused alone was alternatively charged under s. 489—B and the accused alone was convicted under s. 489—B. 53 B. 344: 1. L. R. 148.

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alike
369: 30 Cr. L. J. 619.

—this clause contemplates all the offences whether substantive or abetment of those offences committed in the course of same transaction being tried together. 1929 Cal. 160: 30 Cr. L. J. 619: 116 I. C. 369.

(3) Offences which are not committed in the course of same transaction.

—a fight between two parties is not same transaction. 20 C. 537, 6 C. 96: 6 C. L. R. 521, 1881 A. W. N. 28, 1881 P. R. 26, 1906 R. 5, 8 W. R. Cr. 47, 9 W. R. Cr. 33, 12 W. R. Cr. 75, 14 C. 339.

—In a case of riot when there is difference in the common object the transaction is not the same. 6 M. L. T. 17: 11 Cr. L. J. 30, 1833 A. W. N. 28.

—where a conspiracy is entered into in one district and the acts in pursuance of the same are committed in another district, the M. try the accused in the district outside his district. W. N. 975.

S. 239. Clause (d)—(3) Offences which are not committed in the course of same transaction—*contd.*

—persons charged under s. 412 cannot be jointly tried with a

—the keeping of a gaming house and being present in it at the time of a police raid cannot be said to be part of the same transaction. 35 P. R. 1914 Cr. 5 P. R. 1910 *Contra*. 9 N. L. R. 68, 1919 P. R. 6, 20 Cr. L. J. 763 (Pat.), 20 A. L. J. 967, 1929 Ali. 937; 1929 Cr. C. 669.

—the action of the offender and that of the rescuer of him from custody do not form the same transaction. 29 C. 395; 6 C. W. N. 463, 11 M. 441, 13 C. W. N. 804; 9 Cr. L. J. 147.

—the thief and his rescuer from lawful custody should be tried separately 13 C. W. N. 804; 9 C. L. J. 147.

—offences under ss. 390 and 411 are distinct and not committed N. 35 *Contra*.
not fatal to a
W. N. 463.
C. cannot be

of

persons on different dates

other person not taking
by false representation
and jointly there being no
continuity of purpose nor any contiguity of time. 1910 Cr. C. 521.

—the author of a defamatory article charged under s. 500 I. P. C. and the printer thereof who is charged under s. 501 I. P. C. cannot be tried together unless there is conspiracy between them. 50 C. 159.

—persons giving false evidence should be tried separately unless conspiracy is proved. 16 W. R. Cr. 47, 6 M. 252, 4 A. 293, 28 I. A. 257 P. C., 5 Bom. H. C. 55, 1 Bom. L. R. 53, 30 C. 808, 14 Bom. L. R. 972, 5 A. 17, 1881 A. W. N. 83, 1882, A. W. N. 41, 61, 160, 1885 A. W. N. 51, 4 L. B. R. 231; 4 Cr. L. J. 419, 11 W. R. Cr. 16, 2, M. 59, 1883 P. R. 100, 3 M. H. C. R. Ap. 82, the mere allegation of

ent

S. 239. Clause (d)—(3) Offences which are not committed in the course of same transaction—contd.

—but persons filing joint written statement and one giving evidence in support thereof may be tried jointly. 1884 A. W. N. 52.

—a charge against five accused of having committed a riot and a charge against four of them of having committed criminal trespass on a different occasion do not form the same transaction. 14 C. 395.

—murder and robbery on one occasion and another act of robbery committed a few hours after in another place, though very near to the scene of the former offence, do not form parts of the same transaction. 14 A. 502.

—where several dacoities were committed by several persons but the persons implicated in one dacoity were not the same as those implicated in the other or others, the dacoities were not committed in the same transaction and could not be tried jointly. 19 A. L. J. 610

—dacoities committed on different dates do not form parts of the same transaction. 1882 A. W. N. 180, 8 M. L. T. 286.

—theft and assault cannot be said to form parts of the same transaction. 100 I. C. 965 : 28 Cr. L. J. 357 : 1927 Leb. 274.

—the murder by one person and the intentional omission to give information in respect thereof by another person who discovered the murder, cannot be said to form same transaction. 19 A. L. J. 925.

—joint trial of different persons under ss. 368 and 366 I. P. C. is bad as the two acts do not form part of the same transaction. 1929 Leb. 496 : 1929 Cr. C. 57.

—joint trials of thieves and their rescuers is bad unless it can be proved that they had collusion. 1930 Cr. C. 202 : 1930 P. 159.

—two acts of abduction, separate and distinct, committed by two sets of persons at different dates, though of the same girl cannot form the same transaction. 21 C. W. N. 756.

—different sets of persons fabricating different acts of *Kabulyat* cannot be tried together when they have no community of interest. 21 C. W. N. 756.

—where a person obtained a promissory note by cheating and on a subsequent date went with another person to cash the note they cannot be tried together for both the offences since the occurrence of each date formed a distinct transaction. 31 C. 1053.

—offences under ss. 147 and 325 I. P. C. committed on one date and offences under ss. 147, 523 and 342 I. P. C. committed on another date form distinct transactions and cannot be tried together. 21 A. L. J. 820.

—where rape was committed on a woman by two accused persons at a certain place and subsequently this woman was taken either by force or by fraud by one of them alone to different places where he alone committed rape on her, a joint trial of both the accused of having committed rape in all the places is illegal. 43 C. L. J. 524 : 92 I. C. 439 : 1926 Cal. 320 : 27 Cr. L. J. 263.

S. 239. Clause (d)—(3) Offences which are not committed in the course of same transaction—*contd.*

—where four prostitutes living in four different houses were jointly tried for disobeying the notice served on them under s. 153 of the Punjab Municipal Act the trial was bad for misjoinder as failure to obey the notice cannot be regarded as one transaction. 93 I. C. 649. 1926 Lah. 249 : 27 Punj. L. R. 189 : 27 Cr. L. J. 465. 8 Lah. L. J. 80.

—If in the course of a quarrel arising accidentally among persons collected to witness a festival, a fight ensues in the course of which some people inflict injuries on others but without any common object or intention they cannot be said to have caused hurt in the course of same transaction and cannot be tried together although all the accused committing the offences were there at one and the same place and at the same time. 86 I. C. 222 : 1925 All. 391. 26 Cr. L. J. 731. 23 A. L. J. 5.

—where several persons were separately engaged in fishing and there was no evidence of prior consultation or identity of purpose they being merely several poachers gathered in the same place at the same time they could not be tried together under ss. 379 and 477 I. P. C. for stealing fish in the course of same transaction. 1927 Mad. 177 : 38 M. L. T. 37.

—person charged under s. 413 I. P. C. cannot be tried with person charged under s. 401 as clause (d) does not apply to the case because the offence of receiving stolen property and the offence of belonging to a gang of thieves relate to separate transactions. 88 I. C. 185 : 1925 Lah. 537 : 26 Cr. L. J. 1097.

Clause (a)—Persons accused of offences including theft, extortion or criminal misappropriation may be tried with Receiver or Retainer etc.

—Persons accused of dacoity may be tried with persons accused of receiving property stolen in the dacoity. 45 A. 223 : 20 A. L. J. 981.

—a person charged with an offence under s. 413 I. P. C. cannot be tried with a person charged with an offence under s. 401 I. P. C. this clause, not applying as an offence under s. 401, cannot be said to include theft, because it is committed as soon as a gang of persons associated for the purpose of habitually committing theft is found and before any theft is actually committed by them. 88 I. C. 185 : 26 Cr. L. J. 1097 : 1925 Lah. 537.

—persons jointly charged with offences under ss. 457 and 436 I. P. C. cannot be tried along with offences under ss. 411 and 414 of which other persons are charged because s. 436 does not include theft or extortion though s. 457 does. 1929 Lah. 142 : 112 I. C. 584 : 29 Cr. L. J. 1080.

Clause (f)—Persons accused of offences under ss. 411 and 414 may be jointly tried.

—the provisions of this clause cannot be extended by a trial of persons accused of offences other than those

S. 239. Clause (f)—Persons charged with offences under ss. 411 and 414 may be jointly tried—contd.

mentioned therein. 89 L. C. 155; 26 Cr. L. J. 1291; 1925 Oudh 452.

—under this clause receivers of stolen property may be jointly tried for the offences of receiving stolen property. 6 Pat. 583; 103 L. C. 674; 28 Cr. L. J. 962; 1928 Pat. 38

Clause (g)—Persons charged with offences relating to coin may be jointly tried.

—a person who passes a counterfeit coin may be tried jointly with a person who is in possession of it. 31 O. 1007.

Misjoinder.

—in determining whether there has been a misjoinder of charges or not the Court should not consider what order was made by the Court but what was the subject of the charge. 1930 Rang. 114; 122 L. C. 273; 31 Cr. L. J. 387; 1930 Cr. C. 402.

—where the accused were not accused of the same offence in the same series of offences arising out of the same transaction, there was misjoinder. 12 C. W. N. 15 (note). 11 M. 441, 14 C 395, 6 W. R. Cr. 83, 8 A. 252, 5 M. 20, 33 C. 292; 10 C. W. N. 32, 2 Weir 303.

—several persons accused of distinct substantive offences of contempt of court cannot be tried jointly. 1883 A. W. N. 25.

—persons giving false information cannot be tried together. 27 C. 985; 5 C. W. N. 131. *Contra*. 27 M. 127.

—persons committing theft cannot be jointly tried with rescuing and committing grievous hurt and objection can be taken in the H. C. 19 C. L. J. 633.

—if several persons are tried together for committing different offences all committed on their own account, justice cannot be assured. 23 A. L. J. 5. 86 L. C. 223; 1925 A. 301.

—several persons cheating different persons on different dates cannot be tried jointly. 13 C. W. N. 1067.

—members of opposing faction must be tried separately. 20 C. 537, 6 C. 96; 6 C. L. R. 521. 1881 A. W. N. 28, 26 P. R. 1881, 5 P. R. 1906, 8 W. R. Cr. 47, 9 W. R. Cr. 33, 12 W. R. Cr. 75; 14 C. 358.

—simultaneous trial of cross-cases by the same M. is not bad. 13 C. L. R. 275, 8 C. W. N. 34.

—where all the accused were charged and convicted under s. 324, but in appeal the conviction of one was changed into one under s. 325, the other should be tried separately. 13 C. W. N. 419.

—unless
5 A. 17, be tried separately
N. 54, 6 M. 252, 4 A. 293,
100 P. 61, 160, 1883 A. W.
piracy 2 Cr. 16, 26 M. 592,
J. 489, allegation of coun-
B. R. 231; 4 Cr. L.
N. 188.

S. 239. Misjoinder—*contd.*

—but persons filing joint written statement and one giving evidence in support thereof may be tried jointly 1854 A. W. N. 52

—the trial to be separate must be so in substance and in form only. 10 C. 405, 15 R. 491, 2 Weir 304, Rat Un Cr 31

—offences committed by several persons on different dates forming part of the same transaction cannot be tried together 31 C. 1043, 8 C. W. N. 715, 33 C. 292, 13 C. W. N. 1067, 10 Cr. L. J. 469

—when in a criminal breach of trust each accused tries to throw responsibility upon the other they should not be tried jointly. 3 C. W. N. 277 (note)

—when one accused makes a confessional statement implicating the other they should not be tried jointly 5 C. W. N. 294.

—In discharging an accused on the ground of misjoinder of parties the S. J. may order retrial. 28 C. 104

—when during trial the facts proved disclose different offences committed by several accused the trying court should try the accused separately 31 P. R. Cr. 1905: 165 P. L. R. 1905 3 Cr. L. J. 76

—joint trial of the accused for different offences is illegal if the offences were not committed in the same transaction. 7 Lah. L. J. 64, 1925 Lah. 326.

Effect of misjoinder

—a misjoinder contravening the provisions of this section is not a mere irregularity which can be cured by the provisions of section 537, 15 Cr. L. J. 420 (Oudh) or by waiver or consent of parties or their pleaders 6 C. 96.

—in discharging an accused on the ground of misjoinder of parties the S. J. may order retrial 28 C. 104.

—a separate trial is the rule and joint trial is the exception and it is for the prosecution to justify joint trial 45 A. 223

—where in a joint trial the proceedings have been illegal from the very beginning, quashing the charges against one accused does not validate the trial. 97 I. C. 363, 27 Cr. L. J. 1099: 1927 Nag. 22.

Miscellaneous.

—a material alteration in the charge at the close of the trial renders the whole trial bad 1920 M. W. N. 149.

—in case of joint trial the judgment should show on the face of it that the case of each accused has been taken into consideration. 35 C. 138

—the S. J. is the original court of original jurisdiction and cannot amend or add charges with regard to matters not covered by the indictment. 1920 M. W. N. 149, 32 C. 22 *fol.*

S. 240. (Withdrawal of remaining charges on conviction on one of several charges)

—this sec. applies to court of trial of every grade. 51 A. 977, 1929 All. 899: 1929 Cr. C. 491: 119 I. C. 575: 27 A. L. J. 1056.

S. 240. (Withdrawal of remaining charges on conviction on one of several charges)—*contd.*

—where the accused was convicted of three offences out of ten of the same nature under s. 498, the H. C. on appeal confirmed the conviction and directed the withdrawal of the rest. 9 C. L. J. 257: 10 Cr. L. J. 482.

—the permission of withdrawal contemplated by this sec. is allowable in the same case only. Rat. Un. Cr. 362, 977.

—charges cannot be withdrawn after the accused has been found guilty on those charges. Rat. Un. Cr. 288.

—when the evidence on all the charges has been recorded and the pleaders heard, charges cannot be withdrawn. Rat. Un. Cr. 286.

—this sec. applies only to charges formally framed. 10 C. P. L. R. Cr. 1.

—this sec. does not apply to stay of proceeding in another case. 6 M. L. T. 90: 9 Cr. L. J. 495: 2 Ind. C. 128, *contra*. A. W. N. 24, 1889.

—where a petition filed by the complainant was referred by the M. to the Superintendent of Police, and M. passed orders relying on the report of the Superintendent of Police, the procedure was wholly illegal. 43 C. L. J. 214: 1926 Cal. 590: 93 I. C. 1041: 27 Cr. L. J. 545.

—where on the conviction on one or more charges the complainant applies in revision to inflict sentence on the others but subsequently withdraws the application, the withdrawal amounts to withdrawal of complaint with regard to such charge with the consent of the court and amounts to an acquittal. 51 A. 977: 1929 All. 899: 1929 Cr. C. 491: 119 I. C. 575: 27 A. L. J. 1056.

S. 241. (Procedure in summons case).

—in the investigation of complaint which forms the subject of two distinct charges arising out of the same transaction, one of which is a summons case and the other a warrant case the procedure of warrant case should be adopted. 11 C. 91: 3 L. B. R. 113: 3 Cr. L. J. 350.

—a warrant case cannot be tried under this chapter. 7 M. 454.

—when a warrant case is tried under this chapter it is more than an irregularity and the conviction should be set aside. 29 M. 372, 17 P. R. 1887, 36 M. 457: 22 M. L. J. 73.

—a summons case cannot be committed to the court of sessions. 1906 A. W. N. 28.

—S. 205 is applicable to both summons and warrant cases. 21 C. 588.

—if a warrant case is tried under the summons case procedure, the M. cannot convict the accused on his own admission without recording evidence and without framing a formal charge. 27 C. W. N. 923.

—in the trial of an ordinary summons or warrant case an accused person is not, before his appearance, entitled to any information as to the details of prosecution evidence. 1930 All. 272 1930 Cr. C. 442: 1930 A. L. J. 339.

S. 242. (Substance of accusations to be stated).

—omission to comply with the provision of sec 242 is an illegality and not a mere irregularity that can be cured by s. 537 Cr. P. C. Where a M. in a summons case objects to state to the accused the particulars of the offence with which he is charged it amounts to an illegality vitiating the sentence. 31 C. W. N. 167; 99 I. C. 411; 54 C. 359; 44 C. L. J. 575. 1927 Cal 196; 28 Cr. L. J. 155. *Contra* non-compliance with the provisions of the sec. is nothing more than a curable irregularity where a failure of justice has not been caused. 1927 Nag 210. 28 Cr. L. J. 511; 101 I. C. 895.

—this sec. does not make the examination of the complainant in a summons case absolutely necessary. 24 C. W. N. 199.

—the accused should not be discharged before complying with the requirements of this sec. simply because the prosecution witnesses are not present. 22 C. W. N. 33 (note).

—in a summons case, the first thing to be done is to ask the accused what he has got to say. 13 Cr. L. J. 488. 15 Ind. C. 488.

—the accused should have a clear statement made to him that he is about to be put on his trial and as to the offence or facts constituting the offence. 3 C. L. R. 87.

—rules as to joinder of charges apply to summons cases, 3 L. B. R. 52 F. B.

—if summons case is jointly tried with warrant case charge should be framed. 29 C. 481.

—the answer of the accused recorded under this sec. takes the place of a plea to a formal charge. 2 L. B. R. 239, 7 Cr. L. J. 422. 4 L. B. R. 143.

—in summary trial the procedure for summons cases and warrant cases provided by s. 262 should be followed, Rat. Un Cr. 725.

S. 243. (Conviction on admission of truth of accusation.) N. B.

The word "may" has been substituted in place of "shall" giving the M. discretion, which he did not formerly possess as to convicting an accused who pleads guilty in a summons case, and the Court is thus able to refuse to accept a plea of guilty which it believes to be untrue.

—the admission of the accused should be recorded at once at the time of the trial and not afterwards from notes or memory. 15 M. 83; 2 Weir 326.

—if a warrant case is tried under the summons case procedure, the M. cannot convict the accused on his own admission without recording evidence and without framing a formal charge. 27 C. W. N. 923.

—when written defence is tendered the M. is not bound to take down the defence by personally examining the accused. 16 W. R. Cr. 53, 2 P. R. 1890.

—the exact words used by the accused in his plea should as nearly as possible, be recorded. 1889 A. W. N. 81.

S. 243. Conviction on admission of truth of accusation—conf.
 —admissions must be recorded as nearly as possible in the words used by the accused 1924 L at 243.

—where an accused person makes an explanatory statement before the framing of the charge the M. should take down the plea in the form of question and answer and in the exact words used by the accused in answer to the charge. 5 Bom. L. R. 233.

—when the accused does not plead guilty, the fact of his showing himself on the mercy of the court ought not to prejudice him. 12 C. W. N. 140 81 I. C. 195 25 Cr. L. J. 707.

—an admission by a person required to furnish security expressing willingness to give security should be duly recorded. 17 M. L. J. 438.

—on a plain construction of s. 246 the M. is not bound, when he thinks that other offences have been proved, to re-open the trial and follow the procedure of ss. 243 and 244. 4 Ind. C. 352; 10 Cr. L. J. 537, 22 W. R. Cr. 46.

—where the accused admitted to have done some wrong on account of ignorance and begged to be excused it did not amount to a plea of guilty 81 I. C. 96 26 Cr. L. J. 707.

S. 244. (Procedure when no such admission is made).
N. B.

This sec has been amended in consequence of the amendment of the previous sec and a proviso has been introduced to provide for the case where a complaint has been made by a Court.

—the M. cannot rely on statements made out of court. 14 R. 572.

—when the accused denies the truth of the complaint the M. ought to hear the complainant and his witness and also the accused and his witness. 6 W. R. Cr. 75.

—where the complainant refuses to be examined it is the duty of the M. before dismissing the complaint, to proceed to take evidence although a strong presumption against the truth of the complainant's case would arise from his contumacious refusal to be examined. 1927 Nag. 210; 101 I. C. 895; 28 Cr. L. J. 511.

—where on the footing that there is no admission of guilt by the accused the M. adopts the procedure under s. 244 Cr. P. C. he cannot take a further plea from the accused person of guilt and relieve himself of the duty of examining prosecution witnesses. 1928 Cal. 213.

—the court should take precaution to ascertain from the accused whether he has evidence to produce in his defence. *Punj. Rec.* 1884, 9.

—the Magistrate must examine defence witnesses. 13 W. R. Cr. 63, 18 A. 221, 4 M. H. C. R. Ap. 29, 4 B. L. R. Ap. 77; 12 W. R. Cr. 77.

—it is discretionary with the court to issue process 14 W. R. Cr. 76, 15 W. R. Cr. 17.

S. 244. Procedure when no such admission is made.—contd.

—but the M cannot refuse to compel the attendance of witnesses upon whom he has already issued processses. 30 C. 121, 10 C. 931, 3 C 573, 4 A 53, 6 C W N. 549, 14 W R 76

—the M is not bound to issue processses to the remaining witnesses. 4 M H C. R. Ap 29

—but the amendment of the section deprives the court of the power to compel a witness to appear before it if the witness declines to receive the summons or to appear although he may be liable for disobedience of summons. If a witness summoned by him does not care to appear the M is not bound to re-issue a summons. 91 1. C. 252 : 1926 Mad 361 27 Cr L J 76

—the M must either grant or refuse the application and cannot merely make an order to "file" it, 6 C W N. 548

—it is the duty of the prosecution to call all the witnesses able to give important information, if such witnesses were not examined without sufficient reason adverse inference may be drawn. 3 C 121, 14 A 531, 15 A 6, 14 C 245 but no such inference can be drawn against the accused. 7 A 904, 8 C 121

—all the persons alleged or known to have knowledge of the facts should be examined, 10 C. 1070, unless they are known to be false witnesses. 16 A 84 F. B.

—when the prosecution witnesses have been summoned the M. cannot acquit the accused without examining the witnesses tendered. 20 M. 388, Rat Un Cr 539, 2 B. L. R. 15, 18 A. 221, 2 Weir 305.

—list of supplementary witnesses submitted before a M. other than the M. who after taking the defence adjourned the hearing and was absent, cannot be granted by the former. 35 A 13

—evidence of negotiations of compromise if admitted to prove admission of guilt, it vitiates the trial. 11 C W N 26 (note)

—the latter part of s 243 should not be read as distinct and separate from the first part of the sec. 1 L B R 95

—it may be an unfriendly act to let out the truth but it is not necessarily a hostile act. C. W. N. 1918 Pat. 251 : 19 Cr. L. J. 241

S. 245. (Acquittal).

—this sec. does not apply to warrant cases. A. W. N. 1885, 260, A. W. N. 1888, 96.

—the M. is bound to proceed under this sec in a summons case. 24 C 42 : 1 C. W. N. 414

—if the accused is not found guilty he must be acquitted and not discharged. 1900 P. R. 19, 43.

—whatever procedure the M. may adopt if he finds no case made out against the accused and lets him go unconditionally, he

S. 245. (Acquittal)—*contd.*

acquits him though he styles his order an order of discharge. 6 Ind. C. 385; 8 M. L. T. 78; 11 Cr. L. J. 350.

—an acquittal without recording evidence is without jurisdiction. 18 A. 223.

—an order of acquittal under this sec. does not affect an offence which is triable in a warrant case. 1886 A. W. N. 260.

—If the M. framed a charge in a summons case acquittal should be under s. 258 and not under this section. 22 W. R. 12.

—the H. C. has in revisional powers direct retrial, 15 M. L. J. 225 but the D. M. cannot order further inquiry under s. 437, 19 P. R. 1900.

—an order of acquittal cannot be passed without hearing the complainant and his witnesses. Rat. Un. Cr. 539.

—no order of daily fine can be passed. 1 B. L. R. Cr. 41, 25 W. R. Cr. 6, 18 W. R. Cr. 44, 27 C. 565.

—s. 250 applies to an order under this sec. 10 B. 199, 5 M. 381, 6 C. 581; 15 W. R. Cr. 9, 30 C. 123; 6 C. W. N. 779 F. B.

—the H. C. has no power in revision to convert an acquittal into a conviction. 8 M. L. T. 380. 8 Ind. C. 293; 11 Cr. L. J. 622; 1910 M. W. N. 517.

S. 246. (Finding not limited by complaint or summons.)

—the M. may convict the accused for offences other than mentioned in the summons without re-opening the trial. 36 C. 869, 22 W. R. Cr. 40.

—when the accused has been summoned for criminal trespass, it is open to the trying M. under this section to convict him of assault and mischief without re-opening the trial and following the procedure laid down in ss. 243 and 244. 36 C. 869.

—the duty of the court is to find out the truth in the midst of the conflicting evidence and it is not bound by all the statements of the complainant. 14 Bom. L. R. 135

—the D. M. cannot pass an order of acquittal under

L. R. 291; 1926 Bom. 255.

S. 247. (Non-appearance of complainant).**Applicability of the section.**

—this section applies to summons cases only; if a warrant case is tried as a summons case the M. cannot pass an order under this section dismissing the complaint for non-appearance of the complainant. 4 C. W. N. 26.

—but if a summons case is tried under the warrant case procedure, and eventually the M. acquits the accused under s. 247 for the non-appearance of the accused on an adjourned date of hearing the acquittal is legal and proper. S. 247 Cr. P. C. lays down a general principle that a person charged with a summons case

S. 247. Applicability of the section—contd

offence is entitled to an acquittal if the complainant is absent and there is no reason why this right be denied to him simply because the M. has adopted the procedure of a warrant case in the trial. 44 M. L. J. 119: 72 I. C. 815.

—this section does not apply to proceedings under s. 107 of the Code. 31 C. W. N. 358: 45 C. L. J. 211. 101 I. C. 607. 1927 Cal. 343: 28 Cr. L. J. 479.

—this sec. gives the M. a discretion and the absence of the complainant in a summons case cannot result in an acquittal of accused without the M. passing an order to that effect. 1923 Cal. 725.

—this section merely authorises the court to adjourn the case to enable the complainant to appear but does not authorise him to dispense with the presence of the complainant except when he is a public servant. 96 I. C. 878: 1926 Lah. 628. 27 Cr. L. J. 1022.

—cases instituted under s. 195 cannot be dismissed for non-appearance. Rat. Un. Cr. 137.

—an order of acquittal for non-appearance, in an warrant case, is illegal and a Pr. M. who passes such an order can revive the complaint. 28 C. 652 F. B., 28 C. 211. 1 C. W. N. 49.

—the right to an acquittal of the accused under s. 247 accrues under two conditions and is dependent firstly on the absence of the complainant and secondly on the court not adjourning the case. If a case is not taken up at all, it cannot be said that the second condition is fulfilled. 87 I. C. 970: 26 Cr. L. J. 1050: 1926 Cal. 102.

Procedure in a mixed case.

—when the investigation forms the subject of two distinct charges arising out of the same transaction one of which is a summons and the other a warrant case the procedure of warrant-case shall apply. 11 C. 91, 41 M. 727.

Appearance.

—appearance by pleader is not sufficient unless specially allowed. 2 Weir 309.

—the presence of the complainant's vakil is not sufficient compliance with the requirements of this section and does not take away the Magistrate's jurisdiction to proceed under this section. 49 M. 833: 27 Cr. L. J. 988: 1926 Mad. 1009: 86 I. C. 652: 51 M. L. J. 730.

—the M. is empowered to dismiss the complaint if the complainant does not appear when the case is called on for hearing even though he appeared soon after. 7 M. 213.

—the M. is not bound to wait for the complainant till the close of the day. 7 M. 213, 49 M. 883: 96 I. C. 652: 27 Cr. L. J. 988: 1926 M. W. N. 928.

—If a Bench summon a party to appear on a certain day at 11 A.M. and the party appears and the Bench does not sit until 2 P. M. and the party does not wait, it cannot be said that the party has failed to appear. 99 I. C. 944: 1927 Mad. 393: 28 Cr. L. J. 208.

S. 247. Appearance—contd.

—there is nothing in the section justifying the construction that the words "upon any day appointed for the appearance of the accused etc" mean any time before the close of the working day. 49 M 883 : 1926 Mad 1009 : 1926 M W. N. 928 : 96 I. C. 652 : 27 Cr. L. J. 988.

Death and substitution of complainant.

—this sec. applies to complainant who is alive but does not appear, and not to one who dies before trial, so the son may be substituted. 20 C. W. N. 862 : 18 Cr. L. J. 154.

—the death of a servant who had complained for his master cannot be a ground for acquittal under this sec. and another servant may come in. 18 C. W. N. 1211, 1. P. L. J. 262.

—the maxim of "*actio personalis moritur cum persona*" in civil law confined to torts does not apply to a case of non-cognizable offence instituted upon complaint and the trying M. has discretion in proper cases to allow the complaint to continue by a proper and fit representative 28 Bom. L. R. 283. 93 I. C. 891. 1926 Bom 178 : 27 Cr. L. J. 491.

—when the complainant died and his nephew was allowed to be substituted and the case started under s 352 I. P. C. it was bad as the accused should have been acquitted. 19 C. W. N. 334 : 16 Cr. L. J. 322

Adjourned hearing

—when the complainant fails to appear the M. has a discretion either to dismiss the complaint and to acquit the accused or to adjourn the hearing or he can even proceed to examine the witnesses in the absence of the complainant 24 C. W. N. 199.

—the M. can adjourn the hearing for the purpose of allowing the accused time to secure the attendance of his witnesses. 16 W. R. 21.

—but he cannot adjourn the hearing unless there are sufficient and proper grounds for doing so. The fact of the accused being guilty of the contempt of the process of the court is no good ground for proceeding with the case 17 C. W. N. 159.

—where the adjourned hearing is not known to the complainant order of dismissal is illegal. 8 M. H. C. R. Ap. 51, 6 W. R. Cr. 58

—so also when the M. did not specify the place where the case was to be taken up but ordered the parties to appear either at Aligarh or at Talibnagar. 1882 A. W. N. 229.

—where the case was, after examination of the witnesses on both sides, adjourned for argument and for the purpose of oral and documentary evidence being explained, the hearing of the case did not end and this sec. applied. 18 C. W. N. 584 : 15 Cr. L. J. 163, 22 W. R. 40.

S. 247. Adjourned hearing—con'd.

—but when after hearing argument date was fixed for delivering judgment this sec did not apply. 23 C W. N. 932; 20 Cr. L. J. 992; 45 C 867, 2 N. L. J. 63; 19 N. L. R. 48, 711 C 669.

—the complaint ought not to be dismissed for default on an adjourned date, unless the M. has seen fit, for sufficient reasons, to require his attendance specially on that date. 2 Weir 306, 7 M 213, 2 Weir 477, 46 C 867.

Mistake of the Court.

—when the case was by mistake called on a date not fixed and the accused was acquitted for non appearance of complainant the M. can proceed with the case at the date fixed. 18 C W. N. 1180; 6 Cr. L. J. 148

Absence of complainant owing to mistake or other reasons.

—If the complainant is, by mistake present in another room of the court-house, no order of dismissal should be passed under this sec. 24 C L. J. 441, 18 Cr. L. J. 104, 13 C. L. R. 303, 47 C 147

—nor any order of dismissal should be passed when the complainant cannot appear owing to circumstances beyond his control. 24 W. R. 64, 5 W. R. 51, or when the complainant is kept out of the way by the action of the accused in getting him arrested on a false charge, 38 M. 1028, or when the complainant was in jail and could not therefore appear. Ratanlal, 59, or where the case was called on for hearing on a date not fixed for hearing. 42 C 365, or where the complainant was dead and another person applied to be brought on the record. 18 C. W. N. 1211, 1 P. L. J. 262, 20 C W. N. 863, 18 Cr. L. J. 151 *contra*. 19 C W. N. 331, 16 Cr. L. J. 322

Order of acquittal of accused for non-appearances of complainant.

—the complainant from
e does not care
to an acquittal
893 27 Cr. L. J

at be present at
cused 7 M 356,

—this section has nothing to do with the presence or absence of the accused. 17 C W. N. 159 (note.)

—the case should be dismissed for non-appearance where

used the case
contra. It is
been served or
L. T. 15.

trate, he can
dismiss the case for non-appearance on any hearing. 2 Weir 308.

S. 247. Order of acquittal of accused for non-appearance of complainant—*contd.*

—where the complaint in a summons case is dismissed for default the order is under this sec. and tantamounts to acquittal and does not fall within s. 436 Cr. P. C., 77 I. C. 295 : 25 Cr. L. J. 359.

—the Magistrate is not entitled under s. 247 to record the order "struck off" nor is he, in a case which he has not tried, entitled to record the order of acquittal on the second complaint. The most he can do is to record an order of discharge. 10 Bom. L. R. 623 : 8 Cr. L. J. 139.

—the right of an accused to an acquittal under this section accrues under two conditions and is dependent firstly on the absence of the complainant and secondly on the Court not adjourning the case. But where a case is not taken up at all the second condition is not fulfilled. 87 I. C. 970 : 26 Cr. L. J. 1050 : 1926 Cal. 102.

Effect of dismissal for non-appearance.

—dismissal has the effect of acquittal of an accused not summoned. 4 C. W. N. 346.

—sec. 403 applies to an acquittal under this sec. even if the accused did not appear. 9 M. L. T. 93 : 9 Ind. C. 253 : 12 Cr. L. J. 41 : 34 M. 253, 14 C. W. N. 346, 7 C. W. N. 493, 711) *fol.*

—an order of acquittal on account of the absence of the complainant is a final order which operates as a bar under s. 403 Cr. P. C. The presence or absence of the accused does not matter. 4 Pat. L. T. 15 : 74 I. C. 719 : 24 Cr. L. J. 815, 37 C. L. J. 253, 45 A. 58 : 74 I. C. 1054, 4 C. W. N. 346, 34 M. 253, 53 B. 693 : 31 Bom. L. R. 795 : 1929 Bom. 408 : 1929 Cr. C. 436 *contra* 40 M. 477.

—the order made on default of appearance of the complainant being one of acquittal the M. is incompetent to restore the case. 1927 Mad. 473 : 1927 M. W. N. 274 : 100 I. C. 238 : 28 Cr. L. J. 270 : 52 M. L. J. 173.

—an acquittal by the M. on the charge under s. 426 I. P. C. is a bar to the accused being put on his trial again on the same fact which were relied on to support the charge under s. 379 I. P. C. 37 C. L. J. 253 : 1923 Cal. 407.

—acquittal bars fresh trial on the same facts. 1885 A. W. N. 43, 3 C. W. N. 760, 5 Pat. L. T. 15 : 2 Pat. L. R. 10 : 1924 P. 140 but not so when the proceeding was substantially irregular as to amount to no trial. Rat. Un. Cr. 59.

—where the lower court acquittal the accused his own file and order was not communicated : : : : : to bar to retrial of the.

Acquittal of co-accused.

—an acquittal under this sec. of one of the two accused will operate also against the other co-accused whose attendance could not be obtained and against whom the trial did not proceed. 4 C. W. N. 346, 38 M. 1028.

S. 247. Fresh process for remaining offence if legal.

—when the M. issued processes for one of several offences alleged against the accused and acquitted them of the offence for which they were summoned, no fresh process could in view of s. 403 Cl. (1) be issued against them in respect of all the offences previously alleged 2 C. L. J. 622 3 Cr. L. J. 115, 16 C. W. N. 633 and 15 C. 698) *Dist*

Whether revival or retrial is allowed.

—an order of revival after an order of acquittal under this sec. is bad. 26 C. W. N. 72 (note), 1924 Cal. 96, 2 C. L. J. 622, but not in case of mistaken order. 18 C. W. N. 1180; 16 Cr. L. J. 148.

—an order of acquittal under s. 247 Cr. P. C. passed by mistake or on a date not fixed for hearing of the case for absence of the complainant, is a mere nullity and does not debar the magistrate from proceeding with the trial on the discovery of the error. 42 C. 365, 2 Weir 307, 2 C. L. J. 622 *Dist*.

—the M. cannot revive a case after an order of dismissal. 4 C. W. N. 26.

—the Cr. P. C. does not contain any provision enabling a court to set aside an order passed on default of appearance. 100 I. C. 238; 1927 Mad. 473. 1927 M. W. N. 274; 28 Cr. L. J. 270.

—an order of acquittal under this sec. can only be set aside by the H. C. The M. or his successor cannot revive proceedings by setting aside the order. 38 C. L. J. 196 73 I. C. 940, 1930 M. W. N. 190.

—dismissal has the effect of acquittal of an accused not summoned 4 C. W. N. 346.

—an order of acquittal on account of the absence of the complainant is a final order which operates as a bar under s. 403 Cr. P. C. The presence or absence of the accused does not matter. 4 Pat. L. T. 15; 74 I. C. 719; 24 Cr. L. J. 815, 37 C. L. J. 253. 45 A. 58; 74 I. C. 1054, 4 C. W. N. 346, 31 M. 253.

—an acquittal by the M. on the charge under s. 426 I. P. C. is a bar to the accused being put on his trial again on the same facts which were relied on to support the charge under s. 379 I. P. C. 37 C. L. J. 253; 1923 Cal. 407.

—acquittal bars fresh trial on the same facts 1885 A. W. N. 43, 3 C. W. N. 760, 5 Pat. L. T. 15; 2 Pat. L. R. 10; 1924 P. 140, but not so when the proceeding was substantially irregular as to amount to no trial. Rat. Un. Cr. 59.

—an order of revival after an order of acquittal under this sec. is bad. 26 C. W. N. 72 (note), 1924 Cal. 96, 2 C. L. J. 622, but not in case of mistaken order. 18 C. W. N. 1180; 16 Cr. L. J. 148

—sec. 403 applies to an acquittal under this sec. even if the accused did not appear. 9 M. L. T. 93; 9 Ind. C. 253; 12 Cr. L. J. 41; 34 M. 253, 14 C. W. N. 346, 7 C. W. N. 493, 711 *fol*.

—an order of acquittal for non-appearance, in an warrant-case, is illegal and a Pr. M. who passes such an order can revive the complaint. 28 C. 652 F. B., 28 C. 211, 1 C. W. N. 49.

S. 247. Whether revival or retrial is allowed—*contd.*

—an acquittal under this sec. of one of the two accused will operate also against the co-accused whose attendance could not be obtained and against whom the trial did not proceed. 4 C. W. N. 346; 38 M. 1028.

Appeal and Revision.

—the Dt. M. cannot set aside an order of acquittal by subordinate M. 7 M. 213; 3 Weir 408; 38 C. L. J. 196; 73 I. C. 940.

—acquittal of accused under this sec. procured by his own trick could not be set aside by the H. C. in revision, but the H. C. would be prepared to set aside the acquittal in such case if the matter has come before it by way of appeal presented by the L. G. under s. 417. 26 M. L. J. 160; 1914 M. W. N. 273; 15 Cr. L. J. 236.

—the H. C. has power to interfere in revision with an order of a M. under s. 247 Cr. P. C. when the order is improper. Magistrate adjourning the case previously six times and at no time at the

—no appeal is allowed against an order of acquittal under this sec. 2 Weir 304.

—an order of acquittal of the accused under this sec. can only be set aside by the H. C. The M. or his successor cannot revise proceedings by setting aside the order. 38 C. L. J. 196; 73 I. C. 940.

S. 248. Withdrawal of complaint.

—this sec. applies to summons cases only and a complaint cannot be withdrawn in a warrant-case. 6 M. 316; 3 C. W. N. 329; 548 Rat. Un. Cr. 461; 13 B. 600.

—where the M. takes cognizance of the case on report of the Police to whom the complaint was made, this sec. did not apply. 23 M. 626; 10 C. 551.

—where the M. had no jurisdiction to try the case for want of sanction, withdrawal of the complaint is no bar to the entertainment of fresh complaint. 22 B. 711; 29 M. 126; 16 M. L. J. 79; 1 M. L. T. 31; 3 Cr. L. J. 274 *Dis.*

—the provisions of this section have not been affected or abrogated in cases or proceedings by the Corporation by the provisions of sec. 537 of Calcutta Municipal Act. 53 C. 631; 30 C. W. N. 598; 1926 Cal. 786; 43 C. L. J. 369; 96 I. C. 648; 27 Cr. L. J. 985.

—in a case of contempt of court the public servant is the complainant. 2 B. 653.

—the withdrawal ought to be distinguished from compromise. 21 C. 103.

—a case is compromised if withdrawn with the consent of the accused and it is withdrawn under this sec. without such consent. 20 C. W. N. 1209; 18 Cr. L. J. 107.

—the M. alone and not the Police can allow withdrawal as it is a judicial act. Rat. Un. Cr. 91.

S. 248. Withdrawal of complaint—contd.

—in case of withdrawal the M can award compensation. 56 P. R. 1887 *Contra* Rat. Un Cr 462.

—a D M. cannot revive the case where the Deputy M. has allowed withdrawal. 25 W. R. Cr 61. 10 C 551

—there is nothing in s. 245 which involves a withdrawal of the whole complaint merely because the complaint is withdrawn against one of the accused 5 Lsh 239; 25 Cr. L J 629; 81 I. C. 117

S. 249 Power to stop proceeding when no complaint.

—this section cannot be utilised in respect of warrant cases but applies only to summons cases instituted otherwise than upon complaint When there is a Police report on the file no fresh case based on the complaint of the private party is entertainable 94 I. C. 890 27 Cr L J 693; 1926 Pat 292. 7 Pat L. T 449

—where summons has been issued upon an accused under s. 181 I. P. C on the report of the Police that the accused had given false information but subsequently upon receipt of another report in another case that the information given by the accused was true the M cancels the summons, he exercises his power under this section. 1 P. L. T 28

—the order under this section does neither amount to an acquittal nor to a discharge, so does not bar further proceedings in accordance with law. 1913 P R. 9.

S. 250. (Frivolous or vexatious accusation).

The sec has been recast and fully amplified giving legislative sanction to the decisions of the High Courts regarding the way in which the powers under the sec. should be exercised.

The important changes are following :—

The words "false and either frivolous or vexatious" have been substituted for the words "frivolous or vexatious".

(1) *Under the old law the order to pay compensation was part of the order of discharge or acquittal and irrespective of the complainant remaining absent or present The amendment provides to call upon the complainant, if present forthwith to show cause why he should not pay compensation and if absent, to summon him to appear and show cause*

(2) *The limit of the amount of compensation has been increased from Rs. 50 to Rs. 100 if the Magistrate is not a Magistrate of the third class*

(3) *Under the old law imprisonment could be awarded in case the compensation could not be recovered but under the amendment the Magistrate is empowered to award imprisonment in default of payment of compensation, by the order of compensation itself.*

(4) *Sub-sections (2-B) and (2-C) are new, the former making the provisions of ss 68 and 69 of the I. P. C. applicable when any person is imprisoned and the latter not exonerating the complainant from being further liable in the Civil or Criminal Court.*

S. 250. The important changes are following :—contd.

(6) Under the old law no appeal would lie from the order of the 1st class M. but under this amendment such appeal will lie if such Magistrate awards compensation exceeding fifty rupees.

(7) Sub-section (4) has been amended allowing one month's time from the date of the order in case no appeal lies.

(1) Object of the section.

(2) Applicability of the section.

(3) "Discharges or acquits the accused."

"By his order of discharge or acquittal."

(4) "False and either frivolous or vexatious."

(5) Upon whose complaint or information the accusation was made i. e. Who is to pay compensation.

(6) To whom compensation is awardable.

(7) Amount and nature of compensation.

(8) Procedure.

(9) Appeal and Revision.

(1) Object of the section.

—the object of this sec. is not to punish the complainant, but to award by summary order some compensation to the person against whom a frivolous or vexatious complaint is brought, leaving it to him to obtain further redress by a regular civil suit or criminal prosecution. 30 C. 123 p. 129 F. B. This ruling has been given effect to by the insertion of sub-cl. (2 C.) in the amendment.

(2) Applicability of the section.

"In any case instituted upon complaint" etc.

: instituted on police report

21 C 979, 22 B. 934, 30 C.

183, 1 P. L. J. 106 : 17 Cr. L.

complaint lodged by a Police

Officer as such. O. U. W. N. 519, 21 C. 979, 7 C. W. N. 206, 1879 P. R.

16, 22 B. 934. But it applies to a case started on police information

in a non-cognizable case 26 B. 150 F. B. 22 B. 934 overruled.

—this sec. does not apply against only the instigator of false information. 20 Cr. L. J. 100.

—but a mere informant is not liable to compensation under

L. J. 702 : 24 A. L. J. 221.

to Police and not to the

e Police. If A tells B, B

not be ordered to pay com-

—where a person made a report to the police which was found

compensation was

an informa-

67 : 1926 All

107 Cr. P. C.

S. 250 (2) Applicability of the sec.

—under sec. 250 as amended, the complaint must be false and either frivolous or vexatious before an order for compensation is passed. 87 I. C. 921; 26 Cr. L. J. 1033; 1926 Nag. 31.

—the mere fact that a complaint is frivolous or vexatious does not necessarily mean that it must be false. Compensation can be awarded only if the complaint is false and also frivolous or vexatious. 89 I. C. 159; 26 Cr. L. J. 1295.

"Any offence triable by a Magistrate."

—the expression "offence triable by a Magistrate" in the sec. relates to offence which is triable by a Magistrate. 8 Sep. 2 Cr. P. Code. An order in respect of accusation under 1 without jurisdiction. 1930 Lah. 1 Bur. L. J. 38 Ref., 15 P. R. 1919 Dist.

—this sec. does not apply when the charge which is being inquired into by a M. is one which is exclusively triable by a court of Sessions. 40 A. 615 19 Bom. L. R. 60; 18 Cr. L. J. 463; 2 Weir 315; 25 A. L. J. 818; 103 I. C. 807, or to a case which is not ordinarily (being specially empowered under a 30) triable by a Magistrate. 26 P. R. Cr. 1902; 2 Weir 315; Rat 961; 40 A. 615; 1919 P. R. 15, the mere fact that the M. refused to commit the case to the Sessions will not invest him with the power of imposing fine. 25 A. L. J. 818; 103 I. C. 807; 1927 All. 744; 40 A. 615 Ref.

—when the M. tries an accused for an offence *prima facie* triable by him when really if the facts had been proved it would have been exclusively triable by the Sessions Judge, compensation order by the M. is illegal. 1930 A. L. J. 465; 123 I. C. 756; 1930 Cr. C. 448; 1930 All. 280; 1922 M. 223, Ref. 1926 All. 59 Dist.

—but when the complaint disclosed a case triable only by a Court of Sessions but after preliminary inquiry the M. issued process for an offence which he could try and after trial discharged the accused he had power to order the complainant to give compensation. 81 I. C. 329; 20 Cr. L. J. 265; 16 S. L. R. 205; 45 M. 29.

—in a case in which a complaint has been filed against an accused person for offences some of which are triable exclusively by the M. and some by the S. C. and the accused is after trial discharged in respect of all the offences, no order for compensation can be passed under this section. 48 A. 166; 91 I. C. 38; 1926 All. 519; 23 A. L. J. 1056

—where two false accusations are brought by a complainant, one triable by the M. and the other triable by the Sessions Court and the M. with powers under a 30 Cr. P. C. finds both to be false he can award compensation only in respect of the offence triable by him. But if the compensation is awarded for both kinds of offences and is not apportionable between the two the order is bad for uncertainty and must be set aside as a whole. 1930 Lah. 482; 1930 Cr. C. 594.

S. 250. (2) Applicability of the sec.—*contd.*

—it is immaterial whether the case is triable as a summons case or as a warrant case. 1927 Oudh 175: 28 Cr. L. J. 450: 101 I. C. 482, 48 A. 166 *Dist*

—the power to award compensation can be exercised only by trial court and not by an Appellate Court. 94 I. C. 138: 27 Cr. L. J. 570: 1926 Lah. 427: 27 Punj. L. R. 338, 16 C. W. N. 10: 14 C. L. J. 437, 39 C. 157 F. B., 16 C. W. N. 91 (note), 28 A. 625, (14 C. W. N. 212 *overruled by the F. B.*)

—in a case triable summarily, compensation may be awarded. 11 M. 142, because the section makes no difference between summons case and warrant case. 1927 Oudh 175: 101 I. C. 842: 28 Cr. L. J. 450, 48 A. 166 *Dist*

"Accused of an offence"

—the award of compensation must have reference to frivolous or vexatious accusation and this sec. does not apply to an application made solely with a view to proceed under s. 107 or 110. 7 A. L. J. 743, 15 A. 365, 23 B. 48, 37 Punj. Rec. 1886, 4 P. R. Cr. 1896, 16 P. R. 1893, 33 P. R. 1902.

—this sec applies only to a case where a person is accused before a M. of an offence and not to proceedings the object of which is to require him to give security to keep the peace. 45 A. 363: 71 I. C. 692: 24 Cr. L. J. 228

—the institution of proceedings under s. 117 Cr. P. C. is not an accusation of an offence and consequently does not fall within this sec. 25 B. 48: 2 Bom. L. R. 389, 15 A. 365, 36 A. 382, 21 A. L. J. 207, 20 A. L. J. 614, 1896 P. C. 4, 1902 P. C. 33.

—an application for maintenance under s. 488 Cr. P. C. is not a complaint of an offence and no compensation can be awarded if the application proves to be false. 6 M. L. T. 261.

—this sec applies only in case of a complete discharge or acquittal. 24 C. 53, 8 and 14 P. R. 1897, 29 A. 137 and not in case of dismissal under s. 203. 32 Punj. Rec. 1897, 19, even if the accused was present with a pleader at the inquiry under s. 102. 3 P. R. 1906: 84 P. L. R. 1906: 4 Cr. L. J. 36.

—this sec. does not apply to an application under s. 2 of the W. Br. of Contract Act, in case of breach of contract which is not an offence. 4 C. W. N. 253, 4 M. 234, Rat. Un. Cr. 617, 41 A. 322.

—this sec. does not apply against only the instigator of false information. 20 Cr. L. J. 100.

—this sec does not apply in case of the complaint being partly vexatious, there should be a complete discharge or acquittal. 20 Cr. L. J. 106.

Frivolous or vexatious as regards some.

—when the complaint is frivolous or vexatious as regards some and well founded as regards others, complainant is liable to make compensation to the former. 5 M. 381 15 P. R. 1877.

S. 250 (2) Applicability of the sec.—contd.

—when the acquittal results from compromise this sec does not apply. *Rat Un. Cr 937, 700, 19 P & 1883, 7 C. P. 2, 10 Bom L. R 1036, 30 P R 1910 147 P L R 1910 11 Cr L J 638 8 Ind C 357.*

—but when the complaint is withdrawn under s. 218 compensation may be awarded *Rat Un Cr 462.*

—where the conduct of the accused has not been straightforward throughout no compensation should be awarded *65 P. L. R 1901*

The Magistrate by whom the case is heard.

—when one Magistrate deals with the case another M cannot award compensation *33 C. W N. 861; 1929 Cal 762 1129 Cr C. 474.*

—the Magistrate who deals with the substantive case and makes the order of acquittal or discharge is to make the compensation order. *33 C. W N 861; 1929 Cal 762. 1929 Cr. C 474.*

—when a case partly heard by one Magistrate was made over to another Magistrate under s. 316 Cr P. C and the latter M heard the rest of the evidence and decided the case, held that the latter M was competent to order compensation *19 A. L J. 631, but when a M hears nothing of a case except the complainant's plea against the order, he cannot make an order of compensation., 1822 A. W. N 58*

—the substitution of the word "heard" for "tried" makes a complete trial no longer necessary, and an order under this section may be made after hearing only part of a case, but evidence must be heard. *10 W R Cr 61.*

—an appellate court cannot award compensation under this sec as it is not included within the words "The Magistrate by whom the case is heard" *16 C. W N. 10; 14 C. L J. 437 39 C. 157. F. B., 16 C W N 91 (note), 28 A 625 14 C W. N. 212 overruled by F. B., 3 Bom L. R. 841, 7 Bom. L. R. 998, 21 A. L. J. 834, 94 I. C. 138; 27 Cr. L J 570; 1926 Lab. 427, so also the court of revision cannot. 1928 Ail. 95 28 Cr. L. J 274; 107 I. C. 690; 26 A. L. J. 328.*

Application to other laws.

—this sec. applies to the C. P. Act, 1883, s. 250, which relates to compensation to the accused, while s. 22 C. Tr. Act, relates to compensation to the complainant.

cannot award compensation
550; 22 M. L. J. 138; 13 Cr.
I. 255, 32 M. L. J. 78, 1917

M. W. N. 156.

(3) "Discharges or acquits the accused"**"By his order of discharge or acquittal"**

—the word "heard" signifies that the case must proceed up to hearing. When the complaint is summarily dismissed under s. 203, without issue of process to the accused, such an order of dismi-

S. 250 (3) Discharges or acquittals the accused.

ssal is not an order of discharge or acquittal within this section. 29 A. 137, 1897 P. R. 14, even if the accused was present at the enquiry under s. 202. 1906 P. R. 3.

—the order of compensation cannot be passed without discharging or acquitting the accused. 1929 Lab 613: 30 Punj. L. R. 361: 117 I. C. 883: 30 Cr. L. J. 854: 1929 Cr. C. 181.

—to make the order awarding compensation legal it is necessary that the examination of all the witnesses adduced by the complainant is completed. 51 M. 337: 29 Cr. L. J. 114: 1928 Mad. 169: 106 I. C. 706, 39 C. L. J. 484: 59 I. C. 913, *See other cases under heading "(8) Procedure"*

—this sec. applies only in case of a complete and not partial discharge or acquittal. 24 C. 53, 40 A. 610, 12 S. L. R. 87: 8 and 14 P. R. 1897, 29 A. 137 and not in case of dismissal under s. 203, 32 Punj. Rec. 1897, 19, even if the accused was present with a pleader at the inquiry under s. 102, 3 P. R. 19: 6: 84 P. L. R. 1906: 4 Cr. L. J. 56.

—this sec. does not apply in case of the complaint being partly vexatious, there should be a complete discharge or acquittal. 20 Cr. L. J. 106.

warded when the accused is acquitted
M. 381 10 B. 199, or under s. 247 Cr.
R. 14, 1884 A. W. N. 115, or under s.

—where the accused is released under s. 562 Cr. P. C. he cannot be directed to pay compensation. 106 I. C. 454: 1928 Lab. 134: 29 Cr. L. J. 38.

—when the acquittal results from compromise this sec. does not apply. Rat. Un. Cr. 957, 700, 19 P. R. 1888, 7 C. P. 2, 10 Bom. L. R. 1056, 30 P. R. 1910: 197 P. L. R. 1910: 11 Cr. L. J. 638: 8 Ind C. 387

—but when the complaint is withdrawn under s. 248 compensation may be awarded Rat. Un. Cr. 462.

—where the conduct of the accused has not been straightforward throughout no compensation should be awarded. 65 P. L. R. 1901.

—compensation cannot be awarded unless the order of discharge or acquittal is legal 1 L. B. R. 44.

For cases as to whether the compensation order should form part of the order of discharge or acquittal, see under heading *"(8) Procedure."*

(4) "False and either frivolous or vexatious."

—under the amended section the complaint must be false and either frivolous or vexatious before order for compensation is passed. 87 I. C. 921: 26 Cr. L. J. 1033: 1826 Nag 31, 92 I. C. 588: 1926 All. 141: 27 Cr. L. J. 300: 24 A. L. J. 161: 1929 Sind 113: 30 Cr. L. J. 458: 115 I. C. 331: 1929 Cr. C. 107.

—the expression "Vexatious charges" is sufficiently wide to include a false charge, and the sec. applies when the accusation is

S. 250 (4) "False and either frivolous or vexatious"—*confd.*
deliberately false. 26 A. 512; 1 A. L. J. 234; A. W. N. 1904. 116.
 30 C. 123 F. B. 21 M. 237. 37 B. 376. 1896 A. W. N. 180 *overruled*,
 2 Weir 313; 5 Bom. L. R. 128. 1913 P. L. R. 156

—this sec. applies to a false charge, as also to a merely frivolous charge brought with the sole intent of annoying 15 Bom. L. R. 49; 2 Bom. Cr. C. 5; 14 Cr. L. J. 75; 36 B. 376.

—whether the complaint is frivolous or vexatious is a question of fact. 2 Weir 319

—a complaint is not vexatious, unless the main intention of the complainant was to annoy the accused and not to further the ends of justice 94 I. C. 271; 27 Cr. L. J. 607. 1926 Lab. 365, 42 I. C. 73 (S).

—the word "vexatious" indicates an accusation merely for the purpose of annoyance. 6 C. 799.

frivolous, though it may
 257 *overruled* 2 Bom.
 frivolous, but if false,
 L. J. 92 The dispute

on the point has been set at rest by the new amendment, which lays down that the accusation must be false and either frivolous or vexatious.

—the mere fact that a complaint is frivolous or vexatious does not necessarily mean that it must be false. 89 I. C. 159. 26 Cr. L. J. 1295

—the idea conveyed by the word "vexatious" is that the object of the person making the accusation should be primarily to harass the persons accused. 21 Cr. L. J. 226 (Nag.)

—if a case is malicious it is necessarily a vexatious one. 14 S. L. R. 168.

—the word "frivolous" means silly or without due foundation. 21 Cr. L. J. 41 (Nag.)

—a complaint cannot be said to be frivolous when it is supported by three witnesses and the *Zaildar's* report. 94 I. C. 409; 27 Cr. L. J. 633.

—this section does not apply where the case has been found to be merely false. 34 A. 354, 4 Bom. L. R. 645.

—the M. may find the complaint frivolous and vexatious after the framing of the charge and even after the evidence for the defence has been heard. Rat. Un. Cr. 734, 2 Weir 316, 10 B. 199.

—where a charge is specific and serious it cannot be described as frivolous or vexatious, unless it is found to be false. 2 Pat. L. W. 116, 41 I. C. 661.

—intention of the complainant should be looked to, where the complainant did not know that the complaint was false and it is clear that the intention of the complainant was not to vex or harass the accused, no compensation should be awarded. 11 S. L. R. 55.

—but where the complainant at first believed his case to be true but subsequently after enquiries found that his belief was

S. 250, (4) "False and either frivolous or vexatious"—*contd.*

wrong, it would be his duty frankly to tell the court that he had made mistake, and when he omits to do so it would show unwarrantable malice on his part and he would be liable to pay compensation. 11 Bur. L. T. 201: 19 Cr. L. J. 172.

—in law no distinction can properly be made between a false accusation as to the motive or intention which prompts a man to doing a certain act and a false accusation as to his act. Where a person is charged with theft but he is proved to have committed the act in the *bona fide* claim of right, the accusation of theft is false within this section. 93 I. C. 240: 1926 B. 163: 28 Bom. L. R. 89: 27 Cr. L. J. 448

(5) Upon whose complaint or information the accusation was made i.e. who is to pay the compensation.

—original complainant is not liable for all accusation made by others interested in a case in its course, but when the original complainant himself is the author of the subsequent accusation he may justly be dealt with under this section. 14 C. W. N. 326.

—the question whether servant can be held responsible under this section for an information lodged on behalf of the master is one of fact and depends on the question whether the servant is merely the mouthpiece of the master and is merely giving expressions to his master's accusation, or whether he joins personally in the accusations himself. In the former case he cannot be made liable to compensation. 14 C. W. N. 326.

—where A informs B that C, a constable, has committed extortion on him with a view that B will file a complaint on his behalf and B files a complaint which is dismissed as frivolous, compensation may be awarded against A. 40 A. 79, *contra*. 12 S. L. R. 76

—where a case is instituted under s. 476 at the instance of a person it cannot be said to have been instituted either upon complaint of that person or upon information given to a Police Officer or to a Magistrate. 14 Bom. L. R. 1166.

—it is not necessary that the person ordered to give compensation should be one who himself gives information to a Magistrate provided that he is the person upon whose information an accusation is made. 40 A. 79

—no order can be passed against a person who is merely an instigator. 20 Cr. L. J. 100, 12 S. L. R. 76.

—a person who complains to a Village Magistrate of a bailable offence knowing that the latter must report the substance to the police and if the police sends up the case it is a case "instituted on information" within the meaning of this sec. 38 A. 1006, 1924 Mad. 91, 45 M. L. J. 255: 73 I. C. 941, 39 M. 1006, 25 M. 667, 32 M. L. J. 138, 5 L. W. 290, 4 L. W. 73.

—a guardian or next friend of a minor complainant cannot be ordered to pay compensation under this sec. 1 P. W. R. 1912 Cr.: 83 P. L. R. 1912: 13 Cr. L. J. 134, 13 I. C. 824

S. 250, (5) Upon whose complaint or information the accusation was made i.e. who is to pay the compensation—*contd.*

—In awarding compensation the complaint must be by the complainant or on his information to the Police or the M. 1912 M. W. N. 558, 12 M. L. J. 138; 10 M. L. T. 530, 13 Cr. L. J. 29.

—where the D. J. on the report of a *chaprasi* directed that the papers should be sent to the D. M. for formal hearing of a charge under s. 225 (b) 1. P. C. against the judgment-debtor, no order of compensation could be made under this sec. against the *chaprasi*. 26 A. 183; A. W. N. 1913, 216, 20 C. 481, 153 P. L. R. 1910; 14 Cr. L. J. 1, so also where the prosecution is instituted by the D. J. on the report of a process-server. 25 P. R. 1910 11 Cr. L. J. 634; 105 P. L. R. 1910.

—compensation may be awarded against an Excise Sub-Inspector on whose report criminal proceedings were instituted. 54 C. 371 1927 Cal. 405 100 I. C. 540 28 Cr. L. J. 316

—where the Station House officer presented the charge-sheet through a constable, the latter was not to pay compensation 10 M. L. T. 191; 21 M. L. J. 844; 12 Cr. L. J. 482

—when a police officer institutes criminal proceedings in a non-cognizable case by filing a complaint before a M. compensation may be awarded 26 B. 150; 3 Bom. L. R. 586 (Bombay Police Act IV of 1890 sec. 90.)

—where the peon reported obstruction in attaching properties and the Munsiff sent the case to joint M. who dismissed it and awarded compensation against the peon it was illegal as he was neither 'complainant nor informant' 20 C. 481, 1 B. 175, 26 A. 183, 14 Bom. L. R. 1166.

—but an order of compensation against the complainant who was a Municipal servant was held valid. Rat. Un. Cr. 309.

—where the servant complained on behalf of his master he was not liable to pay compensation. 17 P. R. 1879, 24 P. R. 1869; *the law is different now.*

—the word "person" includes "any company or association or body of individuals whether incorporated or not." 72 I. C. 623; 1923 Lab. 31; 24 Cr. L. J. 463

(6) To whom compensation is awardable

—when the complaint is frivolous or vexatious as regards some and well founded as regards others, complainant is liable to make compensation to the former. 5 M. 381, 15 P. R. 1877.

—Compensation is awardable only to the person who has suffered from the accusation and not to his relatives. 1866 r. R. 89, 97, 1868 P. R. 24.

(7) Amount and nature of compensation.

—the object of this sec. is : . . .
but to award by summary order
against whom a frivolous or vexat
vexatious) complaint is brought

S. 250. (7) Amount and nature of compensation—contd.

redress by a regular civil suit or criminal prosecution. 30 C. 123 p. 129 F. B.

—s. 250 (2) prohibits that compensation to the accused or to each where there are more than one should not exceed Rs. 100; it does not mean that when there is a number of accused persons the total amount awarded to all must not exceed the maximum. 94 I. C. 894; 1926 All. 295; 27 C. L. J. 702; 24 Cr. L. J. 231.

—the loss sustained or the inconvenience undergone by the accused ought to serve as a guide to the M. in awarding compensation. 1881 A. W. N. 167.

—it is not a fine but it is in the nature of damages for malicious prosecution and cannot be credited to the Govt. 26 M. 127, 2 N. W. P. H. C. R. 430, 1866 P. R. 102, 1869 P. R. 1.

(8) Procedure.

—the procedure laid down in Cl. (a) and (b) should be strictly followed and the complainant must be heard. Kat. Un. Cr. 725, 3 Bom. L. R. 586, 777, 2 Weir 380, 5 C. W. N. 214, 11 C. W. N. 62 (note), 5 Cr. L. J. 298, 11 M. 142, 25 B. 15, 8 Bom. L. R. 847; 4 Cr. L. J. 423, 18 C. W. N. 1277; 15 Cr. L. J. 707.

—but a complainant is not entitled as of right to an adjournment to enable him to show cause why an order for the payment of compensation should not be passed. 93 I. C. 158; 27 Cr. L. J. 430; 1926 B. 225; 28 Bom. L. R. 98.

—when an order is passed under s. 250 Cr. P. C. and the complainant is present he must show cause immediately; he cannot insist on an adjournment for that purpose. If adjournment is granted the court can pass an order at the adjourned hearing after considering the cause shown. 31 Bom. L. R. 591; 1929 Bom. 287; 119 I. C. 774; 1929 Cr. C. 36.

—but where a date was fixed for showing causes and although the complainant was absent on that date the court awarded compensation, held that the proper course was to issue notice to the complainant. 33 C. W. N. 861; 1929 Cal. 762; 1929 Cr. C. 474.

—an order under this section should not be made before concluding the examination of all the witnesses for the complainant. 39 C. L. J. 484, 59 I. C. 913, 51 M. 337; 29 Cr. L. J. 114; 106 I. C. 706; 54 M. L. J. 641; 1928 Mad. 169.

—an order for compensation without examining all the witnesses of the complainant is not illegal but one that should only be made in very exceptional circumstances. 44 M. 51.

—compensation can only be awarded after the complainant has had an opportunity of producing all his evidence including those witnesses whose names are not contained in the list but are brought to court without summons. 3 Muz. L. J. 26; 82 I. C. 288; 25 Cr. L. J. 1280, 1923 Lah. 194; 71 I. C. 795; 24 Cr. L. J. 251.

—an order for compensation under this sec. should not be made unless the complainant is given an opportunity to adduce all his

S. 250, (B) Procedure—*contd.*

evidence. 1920 M. W. N. 785, 18 C. W. N. 1277; 15 Cr. L. J. 707, 19 A. L. J. 170, 24 Cr. L. J. 251 (Lab.), 3 Bur. L. J. 26-82 I. C. 288.

—the substitution of the word "heard" for "tried" makes a complete trial no longer necessary, and an order under this sec. may be made after hearing only part of a case, but evidence must be heard. 10 W. R. Cr. 61.

—this sec. does not require that the M. should call upon the complainant to show cause before directing him to pay compensation. 45 A. 474 24 Cr. L. J. 719, *but see amendment*.

—the M. should consider the objections of the complainant against the making of the order, 1923 Lah. 456, 3 Pat. L. T. 203, 66 I. C. 325, 24 Bom. L. R. 805, 1 P. L. T. 553.

—the facts that the complainant is absent when the judgment is pronounced does not entitle the court to pass an order directing the payment of compensation forthwith. The complainant should be summoned and should be given opportunity to show cause. 91 I. C. 704; 1926 All. 241-27 Cr. L. J. 128; 24 A. L. J. 170

—the M. must state the reasons for awarding compensation 10 C. W. N. 544, 3 Cr. L. J. 390, 21 L. W. 646. 90 I. C. 157 1925 Mad. 1139; 26 Cr. L. J. 1501, in order to afford an opportunity to the appellate or revising tribunal 90 I. C. 157. 26 Cr. L. J. 1501. 1925 Mad. 1139.

—where one of two accused is discharged and the other is acquitted on a later date and on the latter occasion the complainant is ordered to show cause and pay compensation to both the accused the procedure is illegal under s. 250 as amended and cannot be cured by s. 537, 29 C. W. N. 127 85 I. C. 129; 26 Cr. L. J. 449. 1925 Cal. 264.

—the direction for
in the order of discharge
sequently 29 C. W. N. 1
57, 18 C. W. N. 44 (note)
34 A. 354, 16 C. W. N. 25
10 N. L. R. 8, 1913 P. L. R. 99. *But see below, and the new amendment.*

—the offences of theft,
discharged of theft
and the M. passed
finally acquitting
the accused on other two charges, there was no error of law in the procedure 93 I. C. 240; 1926 Bom. 163; 28 Bom. L. R. 89; 27 Cr. L. J. 448.

—an order awarding compensation after a discharge need not now be part of the discharge order which should only contain an order calling on the complainant to show cause why he should not be ordered to pay compensation. 95 I. C. 80; 1926 Lah. 298, 27 Cr. L. J. 752, 110 I. C. 232; 29 Cr. L. J. 690.

S. 250, (8) Procedure—*contd.*

—where the order of discharge is signed and dated by the M¹ first and then an order calling on the complainant to show cause why he should not be directed to pay compensation to the accused is past on the same day, the requirements of the sec. is substantially complied with 1927 Lab. 515; 102 L. C. 560; 28 Cr. L. J. 592, 8 Bom. L. R. 847 *fol.*, 1926 Lab. 298 *Dist.*

—the sec. does not contemplate the taking of explanation from the complainant before the order of discharge is passed. The mere fact that by that time the M¹ had made up his mind to discharge or acquit the accused is insufficient 1929 M. W. N. 277

—but it has been held by the Calcutta H. C. that if a M¹ without first writing out his order of discharge under sub-sec. (1) calls upon the complainant to show cause why he should not pay compensation and then combines in one order the order of discharge and the order of compensation, there will not be any substantial contravention of the law 1929 Cal. 332, (11 C. W. N. 62, 1925 Mad. 1139 and 1922 Pat. 157) *Dist.*

—where the order to show cause why compensation should not be awarded is practically simultaneous with the order of acquittal or discharge the provisions of the sec. are complied with 1930 P. 292; 9 Pat. 292; 1930 Cr. C. 526.

—the alternative imprisonment can only be awarded if compensation cannot be recovered 28 C. 161.

—where the order of imprisonment was made without any attempt to levy the amount of the compensation it was invalid both under ss. 250 and 385 cl. 2, 26 M. 127; 4 Weir 321

—where by the order of discharge the M¹ directed the complainant to pay compensation to the accused subject to any cause being shown by him and no cause being shown the M¹, the day after, made his order absolute and further directed the complainant to suffer simple imprisonment for 30 days in default of payment, it was held that the order awarding compensation was in strict compliance with s. 250, as the proviso to the sec. clearly contemplates that the direction shall be considered as in the nature of a rule and the rule shall not be made absolute until the complainant has shown cause, but there was an obvious error as to the order of imprisonment which should be amended in terms that the compensation shall be recovered as if it were a fine, and in the event of its not being so recovered there shall be simple imprisonment 18 C. W. N. 702; 15 Cr. L. J. 150, 22 Ind. C. 726, a similar case is reported in 12 A. L. J. 143; 36 A. 132; 15 Cr. L. J. 193, where order was passed 4 days after and was held that the proceedings were merely irregular as the order of discharge showed that the M¹ did not conceive himself to have finally disposed of the case.

—it is only if the compensation ordered to be paid cannot be recovered that imprisonment can be awarded. 28 C. 251, 21 C. 979, 22 C. 130, 587, 18 A. 96, 19 A. 73, 26 M. 128, 5 C. W. N. 213, 214, 17 C. W. N. 63 (note), 21 C. W. N. 162 (note). But under new sub sec.

S. 250, (8) *Procedura—contd.*

(2 A) *the order for imprisonment can be made in the alternative in the order awarding compensation*

—ordering compensation under this sec. is no bar to grant sanction to prosecute the complainant under s. 211 I. P. C. 21 M. 237 6 B. L. R. 295. 15 W. R. Cr. 9, I Weir 311, 35 B. 376, 15 Bom. L. R. 49

—and to grant sanction under s. 211 I. P. C. is no bar to order compensation 31 P. W. R. 1907, 21 M. 237, 22 C. 586 *Diss.* *Contra* 6 B. L. R. 296. 15 W. R. Cr. 9, 18 P. R. 1901, 26 C. 181

—to sanction or direct a prosecution and also to proceed to award compensation is an improper use of discretion 26 C. 181.

—the court should exercise discretion either to make a complaint under s. 476 Cr. P. C. or to award compensation 27 M. 59, 20 Cr. L. J. 226 (Pat.)

—when an European British subject does not set up his right as such in the original case he cannot be taken to have given up that right for the purpose of proceedings under this section. 17 A. L. J. 896

(9) *Appeal and revision.*

—whenever a complainant is ordered to pay compensation exceeding rupees fifty he has a right of appeal whether amount is to be paid to one accused or more. 26 Bom. L. R. 1243. 1925 Bom. 129, 1929 Sind 176. 1929 Cr. C. 452: 118 I. C. 215: 30 Cr. L. J. 905.

—when the total amount of compensation ordered to be paid exceeds Rs. 50 there is a right of appeal even though the amount of compensation to each of the accused may not exceed that amount 91 I. C. 885: 1926 All. 217: 27 Cr. L. J. 146: 24 A. L. J. 167, 1926 Pat. 70, 90 I. C. 164: 26 Cr. L. J. 1504, 89 I. C. 159. 26 Cr. L. J. 1295, 49 B. 440: 85 I. C. 160: 26 Cr. L. J. 440: 1925 Bom. 129

—an appellate court
sec. 16 C. W. N. 10. 14 (i)
(note). 28 A. 625 (14 C. W.
27 Cr. L. J. 570: 1926 Lat.
21 A. L. J. 834.

—it is doubtful whether the H. C. can award compensation when the matter comes up in revision. 1928 All. 95: 29 Cr. L. J. 274: 107 I. C. 690: 26 A. L. J. 328.

—in an appeal against an order awarding compensation the accused is entitled to have notice
M. W. N. 181: 24 M. L. J. 204. 1
187, 38 M. 89, 27 M. L. J. 629, 26 " "
130: 9 Cr. L. J. 150, 25 Cr. L. J. "

—but the absence of such notice to the accused will not vitiate the order of the appellate court, 33 M. 89, 41 M. L. J. 172, though notice of appeal to the Crown under s. 423 is imperative. 29 M. 187. 41 M. L. J. 172 101 I. C. 192: 28 Cr. L. J. 417: 28 Punj. L. R. 177, because in appeal or revision the Crown is the respondent. 101 I. C. 192: 28 Cr. L. J. 416: 28 Punj. L. R. 177: 1927 Lah. 357: 8 Lah. 568:

S. 250, (9) Appeal and revision—contd.

—the appellate court cannot reverse the order without finding whether the complaint was or was not vexatious. 1915 M. W. N. 181: 22 M. L. J. 204: 17 M. L. T. 164: 16 Cr. L. J. 128, 30 C. 123, A. 519: 31 A. 354.

—an appeal from an order awarding compensation lies by virtue of both s. 250 and 407, consequently the Appellate Court has power to take additional evidence under s. 428, 51 M. 603: 55 M. L. J. 218 Dist., and a mere omission to record the reasons for taking additional evidence in appeal does not invalidate the proceedings of the Appellate Court unless it occasions a failure of justice. 1930 M. 483: 58 M. L. J. 414: 123 I. C. 809: 31 Cr. L. J. 602.

—a S. J. cannot set aside in appeal the order granting compensation passed by a first class M. 1 Bom. L. R. 350.

—the H. C. can revise the order under s. 439 Cr. P. C. and the amount paid may be recovered under s. 537, after the H. C. has set aside the order. 29 P. C. 1903, 12 P. R. 1885, 10 Cr. L. J. 569, 1884 P. R. 14.

—a superior criminal court has under s. 435 jurisdiction to examine and order under s. 250 in the exercise of its ordinary revisional jurisdiction 17 A. L. J. 896.

—where the accused died, the H. C. could not make any order in revision. Pat. Un. Cr. 634.

—if pending the revision the complainant dies, the revision-petition does not abate and may be continued by his relations. 1908 P. R. 24.

—where no prejudice is caused the H. C. will be very reluctant to interfere with the order of the competent court under this sec. 1924 A. 674.

S. 251. (Procedure in warrant case).

—warrant-case cannot be tried as a summons case. 29 M. 373: 4 Cr. L. J. 231, 10 W. R. Cr. 31, 1886 A. W. N. 96, 36 M. 457: 22 M. L. J. 73: 12 Cr. L. J. 585.

—in case of combination of summons and warrant-cases procedure should be that prescribed for warrant-case. 11 C. 91.

—in trying a warrant-case the procedure laid down in this chapter must be followed. The violation of this is more than an irregularity and cannot be cured by s. 537 Cr. P. C. 17 Bom. L. R. 490, 1883 P. R. 29.

—a Presidency Magistrate must follow the procedure of this Chapter subject to the special provisions of s. 362 Cr. P. C., as to the mode of taking down the evidence. Ratanlal. 539.

—where in a prosecution under s. 153 I. P. C. the judgment in a connected proceeding was relied on and evidence was shut out, held that the violation of the provisions of sec. 251 Cr. P. C. was necessitated by the ss. 99A to 99F Cr. P. C. and consequently it did not vitiate trial. 1927 All. 654: 104 I. C. 225: 28 Cr. L. J. 785: 25 A. L. J. 846.

S. 252. (Evidence for prosecution).**N. B.**

A similar amendment has been made in s. 244, following cl. (a a) of s. 200, providing that the M. shall not be bound to hear any person as complainant in any case in which the complaint is made by a court.

—an accused person has a right to have the evidence against him recorded as early as possible 6 M. 63.

—where three important prosecution witnesses were examined in the absence of the accused and the latter was not given any chance of re-examining them the conviction was not sustainable. 1927 Oudh 353 : 28 Cr L J. 756 : 103 I C 836

—tha M. is bound to compel the attendance of the witnesses summoned. 6 C. W. N 548.

—in a case under a 498 I P. C warrant cannot be issued to compel the complainant's wife to attend as witness without first requiring her attendance by issuing summons. 22 P. W. R. Cr. 1907. 6 Cr L J 273

—the witnesses should not needlessly be subjected to the inconvenience of attending the court 14 Cr L J. 682 : 12 A. L J. 15 : 21 Ind. C. 1002 and the M has a discretion in summoning witnesses and in selecting them before summoning. 23 W. R. 9, 12 A. L. J. 15

—the M. is bound to examine witnesses tendered by the complainant. 3 C. 389, 4 M 329, 2 A. 447, Rat. Un. Cr. 21, 3 P. W. R. 1908 : 7 Cr L J. 272, 10 C. 1070, 8 C. 121, 14 C. 245, 14 A. 521, 15 A. 6, 16 A. 84, 1903 P. W. R. 3

—where the prosecution witness was examined after the closing of the defence evidence the procedure having been contrary to s. 252 was illegal 1923 Lah. 953 : 29 Punj. L R. 613 : 111 I. C. 396 : 29 Cr. L. J. 844

—It is the duty of the prosecution to bring before the court all the persons who are alleged or are known to have knowledge of the facts or are likely to give important information 10 C. 1070, 8 C. 121, 14 C. 245, 14 A. 521, 15 A. 6. If such witnesses are not called without sufficient reason the court may draw an inference adverse to the prosecution. 8 C. 121.

—the prosecution is not bound to tender a witness for cross-examination only. 14 C. 245, 16 A 84.

—hearing a complainant within sec. 252 does not involve his examination on oath and the trial in a warrant case is not irregular merely because it did not begin with an examination of the complainant by the court. 42 M. L. J. 168 : 65 I. C. 859.

—under this section the complainant should himself produce what evidence he can in support of his complaint and the M. must proceed to hear it. The M. is not bound to issue process for such witness or to grant time for their record their evidence. When the without the assistance of the for the M. to ascertain from th

S. 252. (Evidence for prosecution)—contd.

names of other persons likely or able to give evidence. He must summon the persons of whom the complainant has informed him and who, he considers, are likely to give useful evidence. The proper time to thus ascertain the names of such persons is when the evidence produced in support of the prosecution has been taken including the cross-examination and re-examination if any, before the charge. 49 M. 978; 97 I. C. 643; 27 Cr. L. J. 1123, 1926 Mad. 989; 51 M. L. J. 328

—the witness must be examined orally. The deposition in one case cannot be used in another case being recorded by a typewriter in triplicate. 50 C. 223.

—where the trying M. is of opinion that it is unnecessary to summon a certain prosecution witness, the Sessions Judge should not in revision compel the M. to summon the witness except for most cogent and exceptional reasons. 1938 All. 684; 10 A. I. Cr. R. 99; 116 I. C. 491; 30 Cr. L. J. 631.

—nothing empowers the M. to demand from the complainant the expenses to be incurred by his witnesses in warrant cases. 8 N. L. R. 65; the dismissal of complaint for non-payment of process-fee is illegal. 2 Weir 323.

S. 253. (Discharge of accused.)**Upon taking all the evidence, etc**

—the M. must examine all the prosecution witnesses present before discharge of the accused. 11 C. W. N. 83 (note).

—it is not incumbent on the M. to summon every witness named by the complainant. 93 W. D. C. 344; he cannot discharge an accused present and : N. 83 (note). 4 M.

329, 20 W. L. Cr. 61, 20 W. L. Cr. 23, 1 Cr. L. J. 212; 3 P. W. R. 1908. —a witness cannot be refused on the ground of repetition. 3 C. 389, 2 A. 447.

—where the M. discharges the accused without examining all the witnesses for the prosecution he must record his reasons for the discharge. 9 Bom. L. R. 250; 5 Cr. L. J. 255.

—when a case was transferred from a Bench of Magistrates who had already recorded some evidence to a Deputy M. the latter was bound to examine the evidence already recorded and could not discharge the accused without considering such evidence. 38 C. 828

Order of discharge.

—under s. 253 (2) a M. has ample power to make an order of discharge even before the date fixed for hearing if upon the materials then before him he is satisfied that the offence could not have been committed. 81 I. C. 184; 25 Cr. L. J. 696, 1925 Pat. 154.

EX. —where after the issue of warrant against a person, the M. does not think it proper to proceed further, it amounts to discharge. 4 C. W. N. 242.

S. 253, Order of discharge—*contd.*

—where a non-compoundable case is compounded and the case is dismissed, such dismissal amounts only to a discharge. 1 B. 64.

—where no charge was drawn up and the accused was not called upon to plead or enter on defence, the release of the accused did not amount to an acquittal but to a discharge under this section. 4 B. L. R. App. 1

—failure to examine the complainant before discharging the accused is an error of law and the Magistrate's personal knowledge of the complainant's witnesses being untrustworthy is no reason for discharging the accused. 1929 Cal. 479; 1929 Cr. C. 95

—a discharge before full inquiry and without allowing the complainant to adduce all his evidence is bad and an order for further inquiry by the Dt. M. is legal. 1930 Lab. 158; 31 Cr. L. J. 239; 121 I. C. 289; 1930 Cr. C. 166.

—if after examining some of the witnesses the M. considers the charge to be groundless, he can discharge the accused under cl. (2). 9 M. L. T. 502; 1930 Lab. 461; 123 I. C. 275; 31 Cr. L. J. 481

—a M. is not bound to examine all the witnesses offered or available before discharging the accused for the charge being "groundless" under s. 253 (2). 52 M. 987; 1929 Mad. 754; 1929 Cr. C. 333; 1929 M. W. N. 575; 31 Cr. L. J. 275; 121 I. C. 619; (1911 M. W. N. 149; 27 Cr. L. J. 541) *Rel. on.*

—a M. has power to discharge an accused even if no witnesses are examined under a 252. 93 I. C. 1037; 1926 All. 461; 27 Cr. L. J. 541; 24 A. L. J. 512.

—a warrant case cannot be dismissed for non-appearance of the complainant. 4 C. W. N. 26, 46; 1 C. W. N. 57.

—in a non-compoundable warrant case the absence of the complainant would not justify a discharge. 10 C. 67; 13 C. L. R. 408; Rat. Un. Cr. 524; 20 C. W. N. 698, nor the withdrawal of the complaint, the M. should proceed with the inquiry in spite of the withdrawal of the complaint. 13 B. 600; 37 B. 669.

—withdrawal of the complainant in a prosecution for breach of trust does not by itself end the case or acquit the accused. The order of discharge is one which the M. passes when he finds that no case has been made out. 1929 Mad. 7; 115 I. C. 156

—illegal arrest by the police without warrant issued on
 to justify a discharge.
 Cr. L. J. 89.
 the accused. 37 P.

—the finding by a M. that no case is made out does not amount to saying that the charge is groundless and under those circumstances the M. is not authorised by this sec. to discharge the

S. 253. Order of discharge—contd.

accused. 51 M. 185 : 1928 Mad. 129 : 1927 M. W. N. 845 : 53 M. L. J. 757 : 39 M. L. T. 486 : 105 I. C. 819.

—it will not be a proper exercise of the discretion of the court under s. 253 Cr. P. C. to discharge the accused only on the statement of a prosecution witness proving the prior admission of the complainant that the case is false. The M. should hear the whole evidence before coming to any conclusion. 117 I. C. 883 : 1929 Lab. 623 : 30 Cr. L. J. 854. 30 Panj. L. R. 361 : 1929 Cr. C. 181.

—an order of discharge cannot be made after a charge has been framed, such an order is erroneous and would amount to an acquittal under s. 258. 1903 P. R. 14.

—when a M. has no jurisdiction to try a case he cannot discharge the accused under this sec. but should proceed under s. 346, 2 Weir 323.

—where the M. without framing the charge takes evidence for the defence and finds the offence not proved, he acts contrary to law and the accused ought to be treated as acquitted under s. 258, 29 P. R. 1833. But it has been held by the Burma Chief Court that the omission to frame a charge and record a plea would not invalidate the order of discharge and that s. 535 (1) would cure the irregularity. 18 Cr. L. J. 1006.

—where after the framing of charge and recording of some evidence the complainant was absent but his pleader was present who applied for adjournment and the accused was thereon discharged under this sec. the order passed cannot be regarded as an order of acquittal. 1923 Cal 403

—any irregularity in complying with the provisions of ss. 253, 256, 342 comes within the purview of a 537 Cr. P. C. and calls for interference if it has occasioned a failure of justice. 49 A. 551 : 100 I. C. 1055 : 28 Cr. L. J. 399 : 25 A. L. J. 379, 46 M. 449 fol.

Fresh proceeding or revival of the case.

—fresh proceedings in respect of the same offence can be taken against a person discharged in a warrant case. 31 M. 543. 29 C. 726 : 6 C. W. N. 633, 28 C. 652 : 5 C. W. N. 457, 18 Cr. L. J. 296 : 1 P. L. J. 34, 28 M. 310, 26 P. W. R. 1908 : 8 Cr. L. J. 249, 29 A. 7, 18 M. L. J. 561 : 4 M. L. T. 140 : 8 Cr. L. J. 208, 28 C. 211, 15 C. 608 F. S.

—a discharge does not operate as estoppel. Where on the date of hearing the complainant and his pleader was absent and the M. discharged the accused under s. 253 Cr. P. C., a second complaint on the very same facts preferred on the next day was maintainable. 1929 Bom 134 : 116 I. C. 251 : 31 Bom. L. R. 146 : 30 Cr. L. J. 594.

—but it has been held in a Patna case that an order of discharge passed under this section cannot be set aside and prosecution started afresh unless there are new materials before the M. which were not before him formerly and unless upon those materials there is a probability of the conviction of the accused persons. 23 Cr. L. J. 236 (Pat.)

S. 253. Fresh proceedings or revival of the case—contd.

—In reviving a case the M. should exercise due discretion. 31 M. 543, 7 M. 454, Rat. Un. Cr. 350, 28 C. 652, p. 638, 29 C. 726 F. B., Ratanlal 350.

—when an accused is discharged under this sec. a further inquiry cannot be ordered without giving notice to him. 14 C. W. N. 284 (note)

—where an accused person has been discharged under this section, the Dt. M. can himself hold a further inquiry or can direct such inquiry to be held by a Subordinata M. 18 Cr. L. J. 706 (All.), 9 A. 52, 32 M. 220, 20 W. R. 46, 47, 14 M. 334, *contra*. 6 M. 25

—the D. M. issuing notice to the accused to show cause why his case should not be further inquired into cannot issue warrant for the arrest of the accused until the order of discharge is set aside. 15 P. R. 1893.

—where on the acquittal of a co-accused the other accused appeared, the Deputy M. could not discharge him without sending notice to the complainant requiring him to proceed with the case and then dispose of the case according to law. 12 C. W. N. 68, but the D. M. could not set aside the order of discharge of the D. M. under s. 437, directing retrial of the accused so discharged. He should refer to the H. C. *same case*.

—it is contrary to the traditions of justice in criminal cases to prosecute a person, who was an accused but discharged and then examined as a witness, upon materials brought out in his evidence 20 C. W. N. 1128, 17 Cr. L. J. 428.

Jurisdiction of superior courts.

—the H. C. the D. M. and the S. J. can order further inquiry. 24 C. 528, 32 M. 220 F. B., 1930 Lah. 158: 31 Cr. L. J. 139, 121 I. C. 289: 1930 Cr. C. 166, but in exercise of that power the D. M. cannot himself frame the charge or direct the subordinata M. to frame the charge and try the accused. 32 M. 220 F. B.

—a different view that can be taken on the evidence would not justify the Sessions Judge to direct a committal, unless he comes to the conclusion that the finding of discharge of the Magistrate is not only wrong but perverse. 6 Pat. L. T. 570: 26 Cr. L. J. 886, 86 I. C. 822: 1925 Pat. 599.

—an order of discharge should not be set aside unless it is perverse or *prima facie* incorrect and there is a suggestion that any further evidence might be forthcoming 1930 All. 257: 1930 Cr. C. 369: 1930 A. L. J. 521.

—when a M. discharged the accused after taking evidence but being influenced by the fact that a civil suit was pending between the parties, the S. J. has power to order further inquiry. 86 I. C. 224: 26 Cr. L. J. 736: 23 A. L. J. 20: 1925 All. 298.

—an order refusing to issue process against persons not under trial amounts to an order of discharge and as such can be dealt with under s. 437 by the S. J. or the D. M., 32 C. 783.

S. 253. Jurisdiction of superior court—contd.

—the H. C. has power under ss. 439 and 423 to revise an order of discharge passed by a Pr. M. and direct further inquiry. 36 C. 994, 27 B. 81, (6 C. L. J. 705, 27 C. 126) *Diss.*

—a D. M. can order a S. M. to revise a case of discharge even though no additional evidence is forthcoming 32 M. 220 F. B.

—the Dt. M. cannot pass an order of remand directing the S. M. to proceed with the case from the stage to which he left it. 20 W. R. Cr. 47, 4 C. 647

—the D. M. cannot withdraw a case adjourned by a Deputy M. for the purpose of framing a charge and then discharge the accused. 30 C. 693.

—in case of regular appeal the ordinary rule is that no court of appeal will lightly substitute its own view of evidence for the view of the court which had the advantage of seeing and hearing the witnesses. An application in revision is on a lower plane than a regular appeal and unless the petitioner can show some plain reasons against the order of discharge, he can have no chance of success 9 Bom. L. R. 742; 6 Cr. L. J. 85; 2 Ind. C. 825.

—before an order of discharge is set aside notice should be given to the accused 17 L. W. 247; 72 I. C. 525. 24 Cr. L. J. 413.

S. 254. (Charge to be framed when offence appears proved)

—proceedings in a warrant case under this chapter before a M. is only an inquiry until a charge is framed, and on a charge being framed, it becomes a trial 38 M. 385.

—a M. ought not to frame a charge under this sec if he be of opinion that he cannot adequately punish the offence. Rat Un. Cr. 499. 1905 U. B. R. p. 33, *contra*. 3 P. R. Cr. L. J. 1901; 2 P. R. 1906, 3 Cr. L. J. 345.

—a petty case of robbery should not be committed to the Sessions simply on the ground that the M. was a witness to the offence or course is to send the case to

his discretion in the matter of
before him. 16 B. 580.

—when he is of opinion that the accused cannot be adequately punished by him, he can commit the accused to the court of Sessions although the case is exclusively triable by him. 24 C. 429.

—in a warrant case it is imperative on the M. to draw up a formal charge against the accused in manner indicated in s. 254 Cr. P. C. 43 C. L. J. 100; 1926 Cal. 537; 93 I. C. 70; 27 Cr. L. J. 406.

—in case of joint trial of warrant and summons-cases charge should be framed for both the offences, otherwise the conviction is liable to be set aside, 29 C. 481, but where the accused has ample opportunity to meet the charge against him the defect in framing the charge does not affect the conviction. 3 Bom. L. R. 675, 7 M. 454.

S. 254. (Charge to be framed when offence appears proved)—contd.

—omission to frame a charge does not invalidate an acquittal.

3 A. 129.

—a charge under this section should allege all that is necessary to constitute the offence charged and all that is requisite in order that the accused may have notice of the matter with which he is to be charged. 1889 P. R. 26.

—a M. after framing a charge cannot dismiss the case without further evidence. 7 C. W. N. 521.

—if after framing a charge the M. finds, on the cross-examination of the prosecution witnesses that no case is made out, he can cancel the charge under s. 213 (2), 3 C. W. N. 110

—where the M. charges the accused at an early stage of the proceedings, the accused has not further right to cross-examine the prosecution witnesses after the completion of the prosecution evidence. 63 P. L. R. 1900.

—the practice of treating evidence in one case as evidence in a counter-case or some other case is wrong. 21 C. W. N. (note).

—where in conformity with the grown up practice the prosecution evidence in one case was treated as defence evidence in the counter-case and no charge was framed in either case and the procedure prescribed by ss. 255 and 257 were not followed, the trial was not proper and could not be cured by any of the ss. in Ch XLV of the Code. 17 Bom. L. R. 490; 3 Bom. Cr. G. 59; 16 Cr. L. J. 538

—when a charge is framed and the plea of accused is recorded
the evidence in support of the
the trial, subject to the right
9 A. 52 F B

—where the M. after examining the prosecution witnesses and the accused, took the evidence for the accused, without framing a charge, and discharged the accused under s. 253, the order of discharge was not legal and it should be treated as an order of acquittal. 29 P. R. 1883 Cr.

—frame of charge by a Subordinate M. though he intends to transfer the case to superior officers, is not illegal. U. B. R. 1905, Cr. P. C. 33; 2 Cr. L. J. 464.

S. 255. (Plea),

—the charge must be read out and explained to the accused so that it may be understood by him thoroughly and the record must show that the M. has done so. 7 C. 96; 8 C. L. R. 471, 5 C. 826, 9 M. 61, Rat. Un. Cr. 55.

—where the charge was not explained to the accused the H.
9 M. 61.

not his plea, to
when the accused
under the latter can
L. R. 206.

plea used. 7 C. 96.

See also s. 254.

S. 255. (plea)—*contd.*

—but if the statement of the accused is in a foreign language, the M. need not record it in the language in which it is made but it should be recorded in the language in which it is interpreted. 5 C. 826.

—an admission which does not admit all the elements of the charge, is not a plea of guilty. 25 W. R. Cr. 23, 4 B. L. R. Ap. 101.

—the accused may admit some or even all the facts alleged by the prosecution, but if he pleads not guilty, the court is bound to proceed according to law. 9 Bom. L. R. 1346; 6 Cr. L. J. 424, 40 A. 284.

—the accused may set up an alternative defence of not guilty. 40 A. 284.

—where the accused did not distinctly plead guilty but threw himself on the mercy of the court, he should be formally asked to enter upon his defence. 12 C. W. N. 140, 6 Cr. L. J. 434.

—an accused person does not plead to a section of a criminal statute, he pleads guilty or not guilty to the facts alleged to disclose an offence under the section. Where certain facts are stated in the charge and also an offence punishable under the section and the accused pleaded guilty generally to the charge, held as the facts mentioned in the charge did not disclose an offence under the sec. quoted, the plea cannot amount to the admission of guilt under the section. 96 I. C. 219. 1926 Lah. 456; 27 Cr. L. J. 957; 27 Punj. L. R. 551.

—an accused can be convicted on his plea of guilty only when the M. has followed the procedure laid down in the preceding secs. 19 M. L. J. 271; 8 Cr. L. J. 491; 4 M. L. T. 324, 3 L. B. R. 279; 5 Cr. L. J. 416, otherwise it is highly improper in a warrant-case to convict an accused on his own admission alone. 29 M. 372, 27 M. 238.

—if after a charge is framed the accused pleads guilty the M. can refuse to convict on the plea and can proceed to take further evidence. 25 C. W. N. 212.

S. 255 A. Procedure in case of previous convictions.

This new sec. provides that the M. can take evidence of previous conviction only after he has convicted the accused, and sets at rest the discussions in the rulings reported in 50 C. 367 and 10 C. W. N. 195 (note).

S. 256. (Defence).

By the amendment the accused has been given the advantage of cross-examining the witnesses at the commencement of the next hearing of the case or, if the M. for reasons to be recorded in writing so thinks fit, forthwith.

—the provision has been deliberately introduced by the amendment and the only possible reason for the change is that the legislature intended to give accused persons an interval of time to think out the line of their defence before they are called upon

S. 256. (Dafanea)—*contd.*

to inform the court how they intend to proceed. Omission of this violates trial. 7 Lah. L. J. 114: 1925 Lah. 339: 26 Cr. L. J. 1158: 88 I. C. 518, 1930 Nag. 255: 31 Cr. L. J. 705: 124 I. C. 619.

—the section as amended is mandatory and requires the Magistrate to question the accused whether he intends to cross-examine the prosecution witnesses. When the accused is defended by a vakil the M. may ask the questions after the close of the prosecution, but if he calls back the witnesses forthwith, he must record his reasons. But when the accused is not thus defended the M. is bound to give him an interval before asking him the question whether he intends to cross-examine the witness, or he must record his reasons for not doing so. Breach of this rule violates the trial. 50 M. 740: 99 I. C. 44: 1927 Mad. 78: 28 Cr. L. J. 12: 38 M. L. T. 141.

—but it has been held that the failure to comply with the
 F. T.
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Scope and application of the section.

—this section applies to summary trial of warrant cases under chap. XXII as well as to trial of such cases under Chap. XXI Cr. P. C., 51 M. L. J. 637: 24 L. W. 649, 93 I. C. 159 Diss.

to neglect
 M. L. T.
 I. C.
 20 C. 469
 N. 192, 12 Cr. L. J. 548 *contra*, it is merely an irregularity and the conviction is not thereby vitiated. 16 Cr. L. J. 5, 93 I. C. 72: 1926 Lah. 155: 27 Punj. L. R. 85: 27 Cr. L. J. 408, 93 I. C. 159: 27 Cr. L. J. 431: 1926 B. 226: 28 Bom. L. R. 95, 49 A. 316: 99 I. C. 217: 25 A. L. J. 111: 28 Cr. L. J. 229: 1927 All. 217, (25 M. 61 P. C. Ref.), because the provisions of the sec. do not relate to the mode of trial. 49 A. 316: 25 A. L. J. 111: 1927 All. 217: 28 Cr. L. J. 229: 99 I. C. 1029.

—there is no difference in the meaning between the words "called upon to enter upon his defence" in s. 256 and "called on for his defence" in s. 342, 86 I. C. 66: 1925 Bom. 170. 26 Cr. L. J. 690: 27 Bom. L. R. 105, 1923 Cal. 727, approved but the obligation imposed by s. 256 on the M. to ask the accused whether he wishes to cross-examine the prosecution witnesses is quite distinct from the obligation imposed by s. 342 to question the accused generally for the purposes mentioned therein. 86 I. C. 66: 1925 Bom. 170: 26 Cr. L. J. 690: 27 Bom. L. R. 105.

—the record must show that the requirements of this sec. have been complied with. 14 G. P. L. R. 137, 4 C. W. N. 241, 27 C. 350.

S. 256. Scope and application of the section—contd.

—this section applies to summary trials, therefore in the trial of a warrant case under the summary procedure the accused has the right to cross-examine prosecution witness after the evidence for the prosecution is closed. 1 P. L. T. 652, and the accused is entitled to have further time for producing his evidence. 1930 Sind 146 : 1930 Cr. C. 539.

—the sec. does not prohibit cross-examination before a charge is framed. 21 C. 642, 8 C. W. N. 838.

—this sec. is not applicable to a case under s. 110 i.e. under Chap. VIII. 35 C. 243, 1916 P. R. 1. 99 I. C. 1039 : 28 Cr. L. J. 239, 8 Lah. 265 : 28 Punj. L. R. 438 : 1927 Lah. 470 : 99 I. C. 1039, (but see 9 I. C. 463 (Bur.), 1937 All. 660 : 25 A. L. J. 749 : 104 I. C. 232 : 28 Cr. L. J. 792 : 50 A. 71, 1930 A. L. J. 389 : 1930 All. 272 : 1930 Cr. C. 442) nor to an inquiry in a Sessions case under Chap. XVIII. 37 I. C. 313 19 O. C. 239.

Right of the accused to plead

—if the accused is entitled to an opportunity of stating the case to the court, failure to allow him to do so vitiates the trial. 45 M. L. J. 402 : 1922 M. W. N. 601.

Right of the accused to cross-examine.

—according to the plain language of the section the accused has a right to have the witnesses for the prosecution recalled and cross-examined after the framing of the charge 7 C. L. J. 240, 24 Cr. L. J. 371, 1 P. L. T. 652, 4 M. 230, 104 I. C. 637 : 1927 Rang. 248 : 28 Cr. L. J. 861.

tion and the case is to be tried from the point of framing the charge. 1914 P. R. 11, 1923 P. W. R. 9, 22 A. W. N. 5, 1902 A. W. N. 5, 6 N.

omission is a mere irregularity and the conviction is not thereby vitiated. 16 Cr. L. J. 5 (Mad.)

—while the Bombay H. C. has held that it would depend on the facts of each case whether the failure to comply with the mandatory provisions of s. 256 amounts to a mere irregularity of procedure or to an illegality vitiating the trial and where the accused is prejudiced it is an illegality. In this case where the charge was framed the pleader of the accused was absent and when the M. required the accused to state forthwith whether they wished to cross-examine the prosecution witnesses the accused applied for an adjournment which was rejected by the Magistrate, held that the procedure

S. 256. Time of allowing cross-examination—contd.

examination held they were entitled to have the witnesses recalled and there was no waiver of their right under that section. 37 C. 236 : 1 Cr. C. L. 134

—the point at which the accused should express his desire to cross-examine is when the charge is read over to him 7 C. 27

Re-calling of witnesses and expenses thereof

—the word "recall" used in this sec. does not mean "re-summon," 8 A. L. J. 707 : 12 Cr. L. J. 471, 1930 All 495 : 125 I. C. 32 : 1930 Cr. C. 739.

—the accused is not bound to give reasons for recall, 21 W. R. Cr. 29,

—where prosecution witnesses are recalled for cross-examination at the instance of the accused, after charge has been framed, it is not always under s. 256 81 I. C. 976 : 26 Cr. L. J. 1152

—where the prosecution witnesses have been recalled for further cross-examination in a warrant case under s. 256, the omission for the court to examine the accused thereafter is a serious irregularity, 45 M. L. J. 402 : 1922 M. W. N. 601

—where no accused presented, after the close of the evidence

—the M. is bound to recall the witness if so claimed by the accused, even if they were cross-examined before the framing of the charge, that the accused would not be prejudiced by the circumstances of the case, senses of recall, 6 C. W. N.

—when the accused asked for the recalling of the prosecution witnesses for cross-examination after the framing of the charge under s. 256 Cr. P. C. the M. cannot direct the witnesses to be produced after the accused has deposited the cost of their attendance. Such order cannot be justified under s. 257 (2) if no opportunity was given to the accused for that purpose under s. 56. 93 I. C. 963 : 5 Pat. 110 : 27 Cr. L. J. 499 : 1927 Pat. 214.

—where the prosecution witnesses are recalled by the accused

—re-calling of witness must be done presumably at the public expense. 12 P. R. 1907 : 6 Cr. L. J. 339 : 32 P. W. R. 1907, 2 C. L. J. 17 (note), 6 C. W. N. 424, 8 N. L. R. 65, 15 I. C. 970, 59 I. C. 416 (Lehore).

S. 256. Re-calling of witnesses and expenses thereof—contd.

" and is not sub-
 " R. 542, 7 C. L. J.
 " I. C. 371: 24 Cr.

—a M cannot refuse to summon a witness for the prosecution on the ground that fees for his attendance were not paid. 4 C. W. N. 351.

"Remaining witnesses", meaning and evidence of.

—the expression "remaining witnesses" is not necessarily confined to the witnesses named by the complainant and summoned before the framing of the charge but includes any witness who is able to support the prosecution case. 11 Bom. L. R. 1153.

—where after certain prosecution witnesses, who had been examined and cross-examined, were recalled and cross-examined again, and then the complainant asked for examining some other witnesses, they were all "remaining witnesses" within the meaning of s. 256. 87 I. C. 110, 26 Cr. L. J. 958.

Discharge of prosecution witnesses.

—a M. should not of his own motion discharge the prosecution witnesses until the accused has exercised or waived his right of cross-examination. 6 N. W. P. H. A. 284, 25 W. R. 48, 8 N. L. R. 65

—when the accused consents to the discharge of the prosecution witnesses he is not, as a matter of right, entitled to resubmit them. 6 N. W. P. H. C. R. 284, 2 A. 253.

Entering upon defence.

—where a trial is commenced as a warrant case, it should be
 "apter for warrant
 " as summons case
 " have his witnesses
 " L. T. 482.

—the accused should be called upon to enter upon his defence. It is not proper to call upon the accused to enter upon his defence before he has cross-examined the witnesses for the prosecution. 8 N. L. R. 65.

—under the provisions of Ss. 256 and 257 the accused is entitled as a matter of right to ask for an adjournment, after a charge has been framed against him, to enable him to adduce evidence in support of his defence. 1 C. W. N. 313, 5 L. B. R. 20.

—but an adjournment beyond the date fixed by the summons is discretionary. 9 C. W. N. 229 (note).;

S. 257. (Process for compelling production of evidence at the instance of accused),**Scope of the section.**

—the principle of this sec. applies to summons cases. 1928 Pat. 253: 107 I. C. 846: 29 Cr. L. J. 308.

S. 257. The Magistrate shall issue such process unless etc.

—the sec is imperative, the accused is, even after he has entered upon his defence, entitled to have the prosecution witnesses summoned for cross-examination. The M. has no discretion to refuse to issue process to compel the attendance of such witness, unless he considers that the application is made for the purpose of vexation or delay or for defeating the ends of justice. Such ground must be recorded by him, and the case of each of the witnesses must be dealt with individually. 51 C. 1044; 84 I. C. 864; 1925 Cal. 411; 26 Cr. L. J. 384; 74 I. C. 863; 24 Cr. L. J. 831; 26 B. 418; 4 Bom. L. R. 38; 31 M. 131; 17 M. L. J. 62 (note); 7 Cr. L. J. 425; 39 C. 781; 13 Cr. L. J. 218; 18 Ind. C. 314; 6 C. W. N. 424; 10 C. W. N. 7 (note); 71 I. C. 481; 1925 M. 106; 25 Cr. L. J. 401; 1929 Cr. C. 642; 1929 All. 914. omission to comply with this provision of law is an illegality which vitiates the trial. 51 C. 1044; 84 I. C. 864; 1925 Cal. 411; 26 Cr. L. J. 384; 45 M. L. J. 305; 74 I. C. 952; 1929 All. 914; 1929 Cr. C. 642.

—the accused need not say in his application for process whether he wants the witnesses for examination or cross-examination, it is for the M. to inquire into the accused's purpose if he thinks that the application may be vexatious. 99 I. C. 64; 1927 Mad. 129; 28 Cr. L. J. 32.

—an important witness cited by the accused if unwell must be examined either giving him sufficient time to appear or on commission. 3 Pat. 591; 82 I. C. 263; 25 Cr. L. J. 1255.

—the M. cannot arbitrarily limit the number of witnesses to be called on each point. 26 B. 418; 31 M. 131; 93 I. C. 1039; 1926 Lah. 454; 27 Cr. L. J. 543.

—under the provisions of S. 257 the accused has a right to make an application to the M. that certain prosecution witnesses should be ordered to attend for the purpose of cross-examination. 6 Pat. L. T. 626; 1925 Pat. 696; 27 Cr. L. J. 353; 92 I. C. 865.

—where most of the witnesses for the prosecution were not cross-examined at all, the M. should, having regard to the words "shall issue" in the sec. direct the issue of process. 11 C. W. N. 304 (note); 28 C. 594.

—it is open to the M. even after a case has been closed and at any time before judgment has been pronounced, to give an opportunity to the accused to cross-examine the prosecution witnesses and to examine witnesses in defence, even if the accused had failed to avail himself of such opportunity which he had at an earlier stage of the proceedings. 21 M. L. J. 283; 9 Ind. C. 897; 12 C. L. J. 150; 10 M. L. T. 84; 1 M. W. N. 327; 31 M. 131; 14 C. W. N. 280.

—it will always depend upon the circumstances of each case whether a related application should be granted or not, see above case.

—where an accused cross-examined or had the opportunity to cross-examine the prosecution witnesses after the framing of charge, the M. may refuse the application made by the accused to summon the prosecution witnesses for cross-examination, unless he is satisfied

S. 257. The Magistrate shall issue such process unless etc.
—*contd.*

that it is necessary for the purpose of justice. 92 I. C. 865 : 1925 Pat. 696 : 27 Cr. L. J. 353 : 6 P. L. T. 626 : 1929 Lab. 578 : 30 Cr. L. J. 380 : 115 I. C. 76 : 1929 Cr. C. 152.

—refusal to summon on the ground that witnesses were implicated in the charge vitiates the trial. 6 B. L. R. Ap. 65.

—where a M. has once granted process on witnesses he is bound to enforce their attendance. 10 C. 931. 6 C. W. N. 518, 35 C. 1093, 30 C. 121, 4 A. 53, 1884 P. R. 28, 1922 P. L. R. 5, 6, 9 C. W. N. 229 (note), 1 P. L. T. 490, 19 A. L. J. 945.

—delay of one day in making application is in itself no sufficient reason for refusing the application. 4 C. W. N. 241.

Examination of defence witness.

—a M. cannot refuse to examine a defence witness present in court, if he is requested by the accused to do so. 4 Bom. L. R. 461.

—a M. cannot refuse to summon witnesses cited by the accused on the ground that the W. R. 7 or on the ground that reliable evidences one way or the ground that they are living : or on the ground that no useful ing them, 24 Cr. L. J. 686 (Lab.), or on the ground that the accused is unable or refuses to pay the costs of the witnesses, 24 Cr. L. J. 831, or on the ground that their evidence is unnecessary, 14 Bom. L. R. 360.

—where an order has been made for the issue of summons on the accused's witnesses that order should be carried out, otherwise the accused has good ground for complaint. 95 I. C. 761 : 1926 Cal. 1088 : 27 Cr. L. J. 841.

—where an important witness is unable to attend court owing to illness his evidence should be taken on commission. 3 Pat. 591.

—the M. is bound to summon witnesses cited by the accused to rebut the court witness. 6 C. 714.

—in a murder case if the accused is denied his right to have his witness examined in court, the conviction cannot stand. 45 M. L. J. 305.

—cross-examination of the defence witnesses cannot be reserved. 3 L. B. R. 109 : 3 Cr. L. J. 23.

Adjournment.

—in a warrant case after the framing of charge the accused has the right to ask for an adjournment for the production of his witnesses. 1 C. W. N. 313, 5 L. B. R. 20.

—but an adjournment beyond the date fixed by the summons is discretionary. 9 C. W. N. 229 (note).

S. 257. Cross-examination of prosecution witnesses.

—in a warrant case the accused has got three opportunities of cross examining the prosecution witnesses, once under s. 252 before the charge is framed, secondly under s. 256 after the charge is framed and thirdly under this section unless the M. decides that the application for cross examination is vexatious 5 P. L. J. 94, 46 M. 449.

—prosecution witnesses recalled by the accused as witnesses for the defence do not change their character as prosecution witnesses and may be cross-examined by the accused. 1922 M. W. N. 120; 65 I. C. 763; 23 Cr. L. J. 192, 23 C. 594, 1 C. W. N. 19, 1928 Pat. 253; 107 I. C. 846; 29 Cr. L. J. 303.

—witnesses recalled under this sec. on the application of the accused are to be treated as prosecution witnesses. 17 W. R. Cr. 51, 25 W. R. Cr. 32, 4 M. 130, 23 C. 594, 1 C. W. N. 19.

—where the accused was told that his case would not be committed to the sessions and yet he would not cross-examine the witnesses for the prosecution, leaving no option to the M. but to close the case, the accused's attitude was deliberately designed to harass the court and his application to cross-examine the prosecution witnesses was rightly refused. 21 M. L. J. 283; 9 I. C. 897 F. B.

—it is only after the accused has entered upon his defence that the M. has the discretion to refuse an application for recalling prosecution witness on the ground of vexation or delay &c. 27 C. 370; 4 C. W. N. 612, 4 C. W. N. 351, 1 C. W. N. 19, 6 C. W. N. 19, 6 C. W. N. 424.

—when accused declined to examine a witness summoned by him, but the court examines him, the accused should be allowed to cross-examine him, 29 C. 387; 6 C. W. N. 550.

—an accused may be allowed to cross-examine witnesses called by his co-accused when the case of the latter is adverse, 21 C. 401.

—although the M. has a large discretion under s. 257 yet when the accused clearly explains that he wanted an adjournment because of the illness of his vakil and the witnesses are subsequently present there is no reason for not letting them being cross-examined. 193 Mad. 632; 1930 Cr. C. 536.

Refusal to summon witnesses.

—it is only after the accused has entered upon his defence that the M. can in his discretion refuse the application of the accused on the ground that it is made for vexation or delay or for defeating the ends of justice. 27 C. 370.

—unless the M. considers that the application to resummon the witnesses is made for the purpose of vexation or delay, the accused is entitled to have the prosecution witness summoned for cross-examination. 51 C. 1044; 84 I. C. 854; 1925 Cal. 411; 26 Cr. L. J. 384.

—the M. cannot refuse to summon the witnesses merely on the ground that they were fully cross-examined. 4 C. W. N. 241, 351.

—but an absolute right of cross-examination of the prosecution witnesses is not conferred by this section. 20 C. 469.

S, 257. Refusal to summon witnesses—contd.

—as a general proposition it can be said that once a M. has given order that a certain witness should be called he should take steps to enforce his attendance. 90 I. C. 923; 26 Cr. L. J. 1627; 1926 Pat. 139, 95 I. C. 761; 1926 Cal. 1088; 27 Cr. L. J. 841; but if he later comes to the conclusion, as in the case of a prosecution who had already been cross-examined at great length, that his presence is not really necessary it cannot be said that he has no jurisdiction to dispense with his attendance and in the absence of prejudice there will be no ground for interference. 90 I. C. 923; 1926 Pat. 139; 26 Cr. L. J. 1627.

—where an accused cross-examined or had the opportunity to cross-examine the prosecution witness after the framing of charge, the M. may refuse the application made by the accused to summon the prosecution witnesses for cross-examination unless he is satisfied that it is necessary for the purpose of justice. 92 I. C. 865; 1925 Pat. 696; 27 Cr. L. J. 353. 6 P. L. T. 626.

—if a M. refuses to examine a defence witness present in court though requested by the accused, the procedure is illegal. 4 Bom. L. R. 461.

Recording grounds of refusal.

—omission to record reasons for refusing to summon witnesses vitiates trial. 51 C. 1044; 84 I. C. 864; 1925 Cal. 411; 26 Cr. L. J. 384, 76 I. C. 1030; 25 Cr. L. J. 310; 1905 Cal. 80, 3 A. 392; 1895 A. W. N. 40, 4 C. W. N. 241, 4 Bom. L. R. 38, 24 Cr. L. J. 831, 25 Cr. L. J. 310.

—where a M. rejected an application after recording on the ground of it being made "too late" it is a sufficient compliance with this section, 39 C. 781, stating facts leading irresistively to the conclusion that the application was for no other purpose than that of vexation or delay or defeating ends of justice is sufficient compliance with the section. 11 C. W. N. 789.

Effect of refusal.

—in case of refusal to summon witnesses if the accused is prejudiced, the H. C. will direct to re-open the case; 14 C. W. N. 280; Rat. Un. Cr. 723, 1925 Cal. 80; 76 I. C. 1030; 25 Cr. L. J. 310, according to the Madras H. C. such procedure is irregular but does not amount to an illegality which cannot be cured. 1925 Mad. 106; 77 I. C. 481; 25 Cr. L. J. 401.

that the ends of justice have
469

a to accused's witness arbi-
be cured by s. 537, 31 M.
L. R. 360; 15 Ind. C. 795;

13 Cr. L. J. 523

—where in a murder case witnesses were not summoned for the mere reason that they were living at a great distance, failure of justice must be deemed to have been occasioned. 45 M. L. J. 305; 74 I. C. 952; 24 Cr. L. J. 840.

S. 257. Production of documents.

—before granting a summons for the production of the documents in the possession of the prosecution under this section the M. should satisfy himself that the documents called for have some bearing on the issues in the case and are relevant. 8 S. L. R. 267

Deposit of expenses.

—the ordinary rule is that in warrant cases the costs of causing the attendance of witnesses of the accused should be borne by the Crown, unless adequate reason be assigned for a departure from this rule 29 Cr. L. J. 459; 108 I. C. 907, 1929 Lab. 23; 117 I. C. 667 30 Cr. L. J. 814.

—non-payment of costs is not an adequate ground for refusal in a warrant case. 74 I. C. 863; 24 Cr. L. J. 831, (Pat). 1898 P. R. 7, *contra*. 73 I. C. 782. 24 Cr. L. J. 686.

—when the M. has once allowed witness to be summoned without demanding expenses from the accused, he cannot at a subsequent stage demand any expense, from the accused 22 Cr. L. J. 711 (Lab.), 1929 Lab. 578; 115 I. C. 76; 30 Cr. L. J. 380; 1929 Cr. C. 152.

—the court in ordering a party to deposit the travelling allowance of a witness should state the amount to be deposited. 87 I. C. 421; 1925 Pat. 553; 26 Cr. L. J. 965; 3 Pat. L. R. (Cr.) 127.

When witness does not appear.

—when it is impossible to procure the evidence of any witness, the M. should pronounce judgment on the evidence in the record. 1881 A. W. N. 31.

S. 258. Acquittal.

—it is not competent to a M. to enter an order of acquittal on a private complainant's offering to withdraw from the prosecution of a non-compoundable warrant case. 37 B. 359; 15 Bom. L. R. 61; 2 Bom. Cr. C. 17, 18 Ind. C. 413; 14 Cr. L. J. 77.

—when some accused were acquitted by the M. on the ground of the case being false, the accused not sent up for trial cannot be proceeded against until the order of acquittal is not set aside. 7 C. W. N. 493, 4 C. W. N. 346, 34 M. 253; 9 M. L. T. 93; 9 Ind. C. 253; 12 Cr. L. J. 41, 12 C. W. N. 63, 7 C. W. N. 711 *Fol*, 37 C. 680; 11 Cr. L. J. 541; 7 Ind. C. 932, 10 C. W. N. 1031 *Dis*.

—a conviction cannot be based upon a hypothetical state of facts quite unsupported by evidence and never put forward by the prosecution. 11 C. L. J. 270, 17 C. W. N. 538.

—an accused must be convicted on the strength of the case made against him and not in consequence of his inability to put forward proof of his innocence. Ratanlal, 5.

See cases under the heading "Benefit of doubt".

—an order dismissing a complaint after a charge is framed, amounts to acquittal. 5 C. L. R. 359, 1883 P. R. 29, 38 M. 585.

S. 258. Acquittal—contd.

—where a M. passes an order of acquittal under this section the S. J. cannot treat it as an order of discharge and direct a commitment of the accused under s. 436 (now 537), 43 M. 330.

—it is not necessary that the conviction or acquittal should be by the same M. who framed the charge. 3 C. 495.

S. 259 (Absence of complainant.)

—it is not in every warrant case, that a M. will be competent to pass an order of discharge on account of the absence of the complainant, the warrant case must fall under this section. 10 C. 67, 1891 A. W. N. 116.

—but the fact that a summons instead of a warrant has been issued in the first instance will not exclude a warrant case from the operation of this section. 10 W. R. 31.

—issue of summons does not make a warrant-case a summons case and the M. cannot dismiss it for the non-attendance of the complainant. 10 W. R. Cr. 31.

—if a summons case and a warrant case are tried together the proper order is one of discharge under this section and not one of acquittal. 41 M. 727.

—the proper order under this section is one of discharge and not of acquittal. 37 B. 369, the order of "striking off" is not proper order under this section. 17 O. C. 18, 1927 Oudh 352; 28 Cr. L. J. 816, 104 I. C. 256.

—the M. cannot arbitrarily discharge the accused merely on the ground that the complainant is absent. 1891 A. W. N. 116, 10 C. 67; 13 C. L. R. 408, 12 Cr. L. J. 184 (Sind).

—in case of offences under s. 421 and 424 I. P. C. which are

1. O. 601. 30 Cr. L. J. 345; 1929 Rang. 14

—if the complainant is absent the M. ought to admit the accused to bail and enforce the attendance for the complainant and his witnesses under s. 92. Rat. Un. Cr. 321, 847. 4 C. W. N. 26.

—a M. is not bound to wait till the end of the day, 7 M. 356. 213, 10 C. 55; but slight delay in attending the court specially on a day when the court sat earlier than usual, would not be a proper ground of discharge of the accused. Ratania 1988.

—where a charge is framed the M. has to go on the presence or absence of the complainant thereafter being that of a witness. 1924 Lah. 627, 27 O. C. 316, 22 Cr.

—where a M. has discharged the accused for default of appearance of the complainant, he can entertain a fresh complaint or restore the old one. 100 I. C. 384; 1927 Mad. 503; 28 Cr. L. J. 304. see other cases below.

S. 259. (Absence of complainant)—*contd*

—a M. discharging an accused under this sec. has the jurisdiction to re-hear the case on a fresh complaint; the order of discharge under this sec. has not the effect of an order of acquittal. 28 M. 310, 26 C. 652, 5 C. W. N. 457, 29 C. 726, 31 M. 543, 26 P. W. R. 1908, 29 A. 7, 29 M. 126 F. B., 41 M. 727, 18 M. L. J. 561, 87 I. C. 928; 26 Cr. L. J. 1040; 1925 Nag. 432, and such second complaint can be filed before a M. who has jurisdiction to entertain it. 87 I. C. 928; 26 Cr. L. J. 1040; 1925 Nag. 432.

—when a M. discharges the accused for the non-appearance of the complainant and subsequently excuses the non-appearance he must proceed *de novo* and the evidence recorded at the first instance cannot be carried over to the second. 1929 Mad. 260; 1929 M. W. N. 184; 115 I. C. 64; 30 Cr. L. J. 493.

—the D. M. has the power to deal with a case under s. 437 if he thought that the accused was improperly discharged. 32 M. 220 F. B., Rat. Un. Cr. 76, 145, 28 C. 102, and to direct a further inquiry, Rat. Un. Cr. 76, 145, 988, 12 Cr. L. J. 184, 15 C. 608 F. B., 9 A. 52 F. B., 14 M. 334 F. B., 10 B. 131, and to revive a complaint. 28 B. 102.

S. 260. Power to try summarily.**Applicability of the section.**

—the provisions of this chapter do not apply to trials before the Presidency M. Rat. Un. Cr. 539.

What is summary trial.

—summary trial implies speedy disposal of a case which can be tried and disposed of at once. 1891 A. W. N. 183, 25 W. R. Cr. 65, see also, 1892 A. W. N. 30.

Duty of the Court trying summarily.**Formalities must be observed.**

—the M. who acts under this chapter should most strictly observe the formalities which it provides. 22 W. R. Cr. 28, 9 C. W. N. 76 (note).

Responsibility is very great.

—the responsibility thrown on M. entrusted with summary powers, is very great and the responsibility of those who have to entrust them with such powers is equally great. 31 A. 189.

When questions of title or other intricate questions are involved.

—in a criminal case the M. should not try a case which involved intricate questions of title or other intricate questions of law. He should exercise his discretion and refer the case to a J. or a Bench. 3 Pat. L. T.

—In cases of title disputes or in important cases the M. should not proceed summarily. 25 W. R. Cr. 65, 4 C. W. N. 247, 1 P. L. T. 121, 3 P. L. T. 347.

S 260. Duty of the Court trying summarily—contd.

Value of the property should be considered.

—where the value of the property does not exceed Rs. 50 and offence under s. 411 I. P. C. is triable summarily, but cl (f) of s. 263 Cr. P. C. requires the value of the property to be set forth, the M. must direct his mind to the ascertainment of the value of the property. 6 Pat. L. T. 114.

—a M. should not try a case summarily by leaving out of consideration the value of the property stolen. 22 W. R. Cr. 65.

The complaint is to be considered.

—facts stated in the petition of complaint as well as the sworn statements of the complainant : be taken into consideration in summarily. 36 C. 67; 12 C. Cr. 89, 29 C. 409; 6 C. W. N.

—when on the examination of the complainant there was no reason to believe that the complaint was exaggerated or false, the M. was bound to proceed and regulate his proceedings at the trial as for the offence made up of the facts complained of and not reduce it so as to give him jurisdiction to try the case summarily. 5 C. W. N. 110, 27 C. W. N. 148.

as to give him jurisdiction. 27 C. 983, 11 C. W. N. 204 N. 253, but the enumeration Penal Code which are not jurisdiction of the M. unless disclose such offences. 16 C. 12, 99 I. C. 348; 1927 All.

—but where the facts stated in the first information disclosed a *prima facie* case under Ss 457 and 354 I. P. C. the M. could not try the case summarily ignoring the offence under s. 354; such trial is unsupportable and a retrial should be ordered. 31 C. W. N. 583; 1927 Cal. 505; 103 I. C. 553; 28 Cr. L. J. 697.

—it is illegal to minimize an offence shutting the Court's eyes to a graver offence in order to justify itself to try the case summarily. 51 A. 540; 27 A. L. J. 340; 116 I. C. 789; 30 Cr. L. J. 686; 1929 All. 349.

When insufficient materials are submitted—

upon inadequate materials witness and passing a non-verdict. 341 (note).

—the nature of the summary procedure should appear on the face of the record. 20 W. R. Cr. 17.

Notes of evidence form part of the record.

—notes of evidence taken in a summary trial form part of the record and the M. is bound to keep them on the record and should not destroy them. 89 I. C. 974; 26 Cr. L. J. 1454.

S. 260. Changing procedure during trial, effect of.

—If during the inquiry of an offence under Ss 147 and 324, the M. after hearing evidence, is of opinion that an offence under s. 323 has been committed, he may try summarily, 22 M. 459, such change L. R. 185.

H. C. that such change
is not prejudicial to the accused

Mixed charges, procedure in.

—when offence triable summarily is charged with other offence the M. cannot discard the latter charge and try the former summarily, 11 C. 236 *contra*. 10 A. 55.

What cases should not be tried summarily.

—an offence which may appear very grave being regarded from the point of view of the sec. applicable to it, may really be, in the light of its particular circumstances, of a trivial nature whereas the consequences following upon conviction of what is in itself a trivial offence may be so grave as to render a summary trial undesirable. In a case under s. 411 I. P. C. where the accused had already been bound down under s. 109 Cr. P. C. and had previous conviction it should not be tried summarily, 1920 All. 267; 115 I. C. 614; 30 Cr. L. J. 505.

—cases which should not be tried summarily, 8 Bom.

—the M. of jurisdiction to try the case summarily, 20 W. R. Cr. 17, 25 W. R. Cr. 10.

—theft with previous conviction cannot be tried summarily, 2 Weir 324, nor theft of property valued at more than Rs 50 22 W. R. Cr. 65, 20 W. R. Cr. 17, 25 W. R. Cr. 10.

—breach of contract by artificers cannot be punished summarily, 4 M. 234, 20 M. 235, 33 B. 22, 25, 27 C. 131, 16 B 368, 4 C. W. N. 201, 253, 6 Bom. L. R. 255, 1912 P. R. 5, *Contra*. 11 A. 262, 43 A. 281.

—offence of keeping printing press without necessary declaration is not punishable summarily. 9 P. R. 1889.

—complaint of an offence under s. 211 I. P. C. cannot be tried summarily, 28 C. 251.

—the complaint of a tenant against the landlord for taking the whole produce which the tenant was entitled to take under s. 71 B. T. Act, cannot be tried summarily, 20 C. W. N. 1212; 17 Cr. L. J. 473, 1 P. L. J. 230.

—a M. should not try a case summarily by leaving out of consideration the value of the property stolen. 22 W. R. Cr. 65.

—when the value of the property, the subject matter of the alleged theft, exceeds Rs 50 it cannot be tried summarily. 22 W. R. 65, 1 P. L. J. 230, 14 N. L. R. 190.

—offences under s. 6 of Act VII of 1851 for illegal demand of toll, 22 W. R. 76, maintenance proceedings under s. 488 Cr. P. C. 20 C. 351, 24 W. R. 61, offences under s. 221 I. P. C., 1894 A. W. N.

S. 260. What cases should not be tried summarily—contd.

176, offences under s. 452 I. P. C., 6 Bur. L. T. 137, offence under s. 60 of the U. P. Excise Act, 46 A. 445, offences under s. 9 of the Opium Act, 4 Bur. L. T. 271 are not triable summarily.

—where the evidence is bulky or the offence a complicated one the summary procedure ought not to be adopted. 87 I. C. 914 : 1925 Sindh 284 : 26 Cr. L. J. 1026.

—when offence triable summarily is charged with other offence the M. cannot discard the latter charge and try the former summarily. 11 C. 236 *contra*. 10 A. 55.

—where the facts stated in the first information disclosed a *prima facie* case under Ss. 457 and 354 I. P. C. the M. could not try the case summarily ignoring the offence under s. 354 ; such trial is unsupportable and a retrial should be ordered. 31 C. W. N. 583 : 1927 Cal 505, 51 A. 540 : 27 A. L. J. 340 : 116 I. C. 789 : 30 Cr. L. J. 686 1929 All. 349

—in a criminal case, the adjudication of which involved intricate questions of title and possession a M. should exercise his discretion under s. 260 (2) and not try the case summarily. 3 Pat. L. T. 347 : 67 I. C. 616 : 23 Cr. L. J. 440

—in cases of title disputes or in important cases the M. should not proceed summarily 25 W. R. 65, 4 C. W. N. 247, 1 P. L. T. 121, 3 P. L. T. 347

—a summary trial is undesirable when a large number of correspondences has to be gone into and the case is by no means a simple one, 35 A. 173 or a complicated question of right and title and production of documentary evidence are involved, 1 P. L. T. 121, 3 P. L. T. 347, 6 S. L. R. 120, 2 Bur. L. J. 55 or where the charge is a serious one, 14 N. L. R. 190, 6 S. L. R. 101, and the trial goes on for length of time and a local enquiry is made and many witnesses are examined ; 23 Bom. L. R. 984, 3 Lab. L. J. 346 or where the conviction of the accused may entail further serious consequences (here

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31, 25 W. R. 69. 1905 P. L. R

What cases may be tried summarily.

—offences under s. 65 of the Stamp Act, 1 Weir 906, offences under s. 49 of the Bengal Abkaree Act, 3 C. 366 : 1 C. L. R. 442, F. B. cases for the recovery of Municipal cesses and taxes, 17 B. 131, offences under s. 121 of the Railways Act, A. W. N. 1902, 24, offences under the Companies Act for not filing the balance sheet with the Registrar of Joint Stock Companies, 35 A. 173, may be tried summarily.

—where the value of the property does not exceed Rs. 50, an offence under s. 411 I. P. C. is triable summarily. 6 Pat. L. T. 114 : 1922 Pat 227.

—the fact that a trial involves a question of title is not in itself sufficient ground for holding that the case is too complicated

S. 260. What cases may be tried summarily—*contd.*
for a summary trial. There is also no law forbidding the summary trial of public servants. 49 L. C. 972; 26 Cr. L. J. 1452.

—the mere fact of there being a large number of accused in a case is not conclusive reason against summary trial. 99 L. C. 348; 1927 All. 136; 28 Cr. L. J. 140.

—a M. can try a person summarily for offences under ss. 143 and 427 I. P. C. suggestion of major offence in the complaint does not matter. 99 L. C. 348; 1927 All. 136; 28 Cr. L. J. 140, but where the facts stated in the first information disclosed a *prima facie* case under ss. 457 and 351 I. P. C. the M. could not try the case summarily ignoring the offence under s. 354; such trial is unsupportable and a retrial should be ordered. 31 C. W. N. 583; 1927 Cal. 505; 103 L. C. 553; 29 Cr. L. J. 697.

Refusal to give time to accused to adduce evidence.

—where in a summary trial the M. refused to give the accused time to adduce evidence the conviction was set aside. 9 C. W. N. 237 (note).

If s. 250 Cr. P. C. applies to cases tried summarily.

—s. 250 is applicable to summary cases tried summarily. 11 M. 142.

Omission to record reasons for summary trial, effect of.

—the omission to record reasons for a conviction in a summary trial is fatal when the evidence recorded does not enable the H. C. to deal with the case on its merits. 6 C. W. N. 40, 6 C. 479.

Effect of summary trial of cases not to be tried summarily.

—where a M. deliberately disregards the offence complained of, which is an offence not triable summarily, and tries it summarily, his proceedings are absolutely void under s. 530 (g). In such case new trial should be directed. 27 C. W. N. 148, 46 A. 446, 5 C. W. N. 252.

S. 261. (Power to invest Bench of Ms. invested with less power).

—a Bench of Ms. cannot try any offence except those mentioned in ss. 260 and 261, 21 W. R. Cr. 12, 9 C. 96.

—offences under s. 48 of the Madras Police Act come under cl. (b) of this sec. 13 M. 142; 1 Weir 910.

—s. 350 Cr. P. C. does not apply to cases tried by a bench of M. 23 C. 194.

—s. 355 Cr. P. C. does not apply to offences under cl. (b) of s. 261 of the Code. 29 Bom. L. R. 710; 1927 Bom. 426; 28 Cr. L. J. 537; 102 L. C. 345.

—an appeal lies under s. 407 from a conviction by a bench of Ms. invested with second or third class powers, 9 M. 36 but not with first class powers. 9 C. 96.

S. 262. Procedure for summons and warrant cases applicable.

—under s. 262 Cr. P. C. it is necessary that in a summary trial the procedure prescribed for warrant cases shall be followed in warrant cases with certain exceptions. One of the distinguishing points between a summons case and a warrant case is that in a warrant case sufficient evidence to support the charge must be recorded before a charge can be framed and the accused called on to plead. Where this is not done the conviction is illegal. 27 C. W. N. 923.

—effect of warrant case being tried as a summons case, plea of accused. 25 Cr. L. J. 1270: 82 I. C. 278.

—the scanty procedure laid down in this chapter should be strictly followed. 22 W. R. 28, 15 M. 83

—the procedure and record should not be made more summarily than what the law requires. L. T. 499.

—where the accused is guilty of causing obstruction in a summary trial, he is liable for causing obstruction in a summary trial. 15 M. 83

—an offence which is so prevalent and so often goes unpunished should not be tried summarily as it is necessary that deterrent sentences should be imposed. 28 Cr. L. J. 959: 1927 Sind 257: 105 I. C. 671.

—the accused is entitled to have processes issued for compelling the attendance of the prosecution witnesses for cross-examination. 22 Cr. L. J. 271 (Cal.)

—the provisions of section 256 which gives the accused an absolute right to cross-examine the prosecution witnesses after they have been examined in chief must apply to a summary trial of warrant cases. 1 P. L. T. 652

—in a warrant case tried summarily the accused should be allowed adjournment to summon witnesses for the defence under s. 257 if the application be not for the purpose of vexation or delay 5 L. B. R. 20.

—in a summons case the charge must be stated and explained to the accused. 1 Bur. L. R. 394.

—the limit of three months applies to substantive sentences of imprisonment and not to imprisonment in default of fine. 6 A. 61.

—in summary trial sentence of six months' rigorous imprisonment is illegal. 4 L. B. R. 338: 9 Cr. L. J. 25.

—solitary confinement may be imposed as a part of the sentence in a case tried summarily. 6 A. 83.

—there is no limit to the amount of fine awardable in a summary trial. 35 A. 173.

—the M. trying summarily is competent to require security for keeping the peace under s. 106. 1886 A. W. N. 181.

—s. 250 Cr. P. C. applies to summary trial. 11 M. 142.

—the H. C. can on revision enhance the sentence, passed summarily, upto two years. Bom. H. C. Cr. Rul. 30th July 1883 F. B.

S. 263. Recording of evidence—*contd.*

—but a contrary view has been expressed by the Divisional Bench of the Allahabad H. C. differing from the above case of 48 C. 280, holding that the provisions of ss. 263 and 264 Cr. P. C. are not controlled by s. 355 Cr. P. C. In cases under ss. 263 and 264 the M. is perfectly free to take such notes as he pleases, or if he prefers, to take none at all and when he takes such notes they are his private property which he can treat exactly as he pleases. 59 I. C. 225: 1927 All. 127: 28 Cr. L. J. 97: 49 A. 261: 25 A. L. J. 140 and that in a summary trial a M. can destroy his notes of evidence. 101 I. C. 174: 25 A. L. J. 346: 28 Cr. L. J. 442: 49 A. 562: 1927 All. 480, (48 C. 280 *diss.*, 25 A. L. J. 140 *fol.*); so also it has been held by the Bombay H. C. that under s. 264 of the Cr. P. C. the judgment is the only record in cases which are tried summarily and in which an appeal lies and that the rough and incomplete notes of evidence taken in the trial cannot and should not be transmitted and attached to the record. 29 Bom. L. R. 710, 26 Cr. L. J. 1026 *Fol.*, and also by the Madras H. C. that an appellate court cannot, in order to test the substance of the evidence forming part of the judgment under s. 264, call for or consult such materials as may exist outside the record, such as notes of evidence taken by the M. 99 I. C. 346: 52 M. L. J. 32: 23 Cr. L. J. 138: 1927 M. W. N. 40: 1927 Mad 298.

Framing of charge.

—this section exempts the M. from framing a charge in cases in which no appeal lies, if appealable sentence is passed, charge must be framed, 27 C. W. N. 923, but it has been held by the Punjab H. C. that the framing of a formal charge in writing is not necessary in a summary trial whether the case is appealable or not. 94 I. C. 415: 1926 Lah. 301: 27 Cr. L. J. 639: 27 Punj. L. R. 265, and also recently by the Calcutta H. C. that it is doubtful whether a formal charge should be framed in a summary trial even if appealable sentence is passed because s. 263 does not mention the need for framing such a charge. In any case the failure to frame such a formal charge under s. 264 would be cured by s. 535 Cr. P. C., 53 C. 738: 93 I. C. 191: 1926 Cal. 1202.

—where process was issued on a charge under ss. 147 and 323 I. P. C. but after summary trial the accused was convicted under s. 323 I. P. C., the conviction was illegal as the M. had no jurisdiction to try the accused summarily for an offence under s. 147 I. P. C. and the omission to frame a charge under s. 147 I. P. C. was not a mere irregularity to be cured by s. 537 Cr. P. C. 52 B. 254: 1928 Bom. 142: 29 Cr. L. J. 492: 30 Bom. L. R. 371: 109 I. C. 220.

—the offence in respect of which the process is issued determines whether a particular accused has been tried for an offence in a case where the trial is held summarily. *the same case.*

—though no formal charge is to be framed yet the M. must specify the offence in such way as to give the accused sufficient notice of it. 16 C. W. N. 696, 1882 A. W. N. 59, 1 Bur. L. R. 594.

S. 263. Framing of charge—*contd.*

—it cannot be said that in summary trial misjoinder of charge can be made without remedy. The same rules of law as apply to charge in warrant cases must apply to the particulars set out in section 263 in a summary record. 16 C. W. N. 69.

Offence is to be stated.

—the facts found by the M. must show what offence has been committed. 3 C. W. N. 281, 1857 P. R. 7, 1849 P. R. 5.

—the record must show the necessary ingredients of the offence charged. 3 L. R. R. 3.

—the offence charged, the offence proved and the reasons for conviction must be recorded. 2 C. L. J. 563; 10 C. W. N. 79; 3 Cr. L. J. 178.

—the record should show clearly the precise nature of the offence and should be complete in all particulars. 1852 A. W. N. 53.

Examination of accused and recording of his plea.

—in all warrant cases the accused must be examined under s. 342 and cl. (g) of the acc. does not give the M. any discretion as to the examination of the accused in a warrant case. The words "if any" in that clause are intended for summons cases and do not apply to warrant cases. 18 C. W. N. 1247; 41 C. 743; 15 Cr. L. J. 190; 22 Ind. C. 766.

—even the plea of the accused cannot take the place of the examination of the accused and render it unnecessary. 3 P. L. T. 347.

—the words "if any" in cl. (g) do not limit the obligation imposed on courts by s. 342 or render it inapplicable to summary trials. 90 I. C. 434; 26 Cr. L. J. 1554.

—omission to record the plea under cl. (g) is fatal. 9 C. W. N. 76 (note), 94 I. C. 408; 1926 Nag. 360; 27 Cr. L. J. 632; 22 N. L. R. 65.

Finding and reasons for conviction.

—though a trial before a M. is summary the M. must give reasons though briefly, for justifying the conviction. 3 Pat. L. T. 499; 65 I. C. 446.

—the reason should include the findings of fact on which the conviction is based. 3 C. W. N. 281, 21 A. 189, 9 C. W. N. 75 (note).

—the reasons for the conviction must be stated in such a manner that the H. C. may in revision judge whether there were sufficient materials before the M. to justify the conviction. 1885 A. W. N. 213; 3 C. W. N. 281, 1899 A. W. N. 81, 1883 A. W. N. 114, 1886 A. W. N. 181, 3 P. L. T. 499, 6 C. 579, 19 Cr. L. J. 719. (Pat.)

—the M. should set out so much of the reason that have influenced him, as to satisfy the accused that the M. has considered each of the ingredients of the offence necessary in law for the particular conviction; this should be recorded with brevity, but the brevity should not be such as to tend to obscurity. 21 A. 189, 10 A. L. J. 251.

S. 263. Finding and reasons for conviction—contd.

—a judgment in a single line is not a judgment according to law. 20 Cr. L. J. 431 (Pat.)

—failure to record a brief statements of reasons is fatal and the whole proceedings are illegal and liable to be set aside. 6 C. W. N. 40, 18 B. 97, 6 C. 679, 1 P. L. T. 716, 13 C. P. L. R. 17, 1927 Nag. 250: 101 I C 671: 23 Cr L. J. 495, 1928 All. 266: 26 A. L. J. 109: 107 I. C. 592.

—omission to comply with the requirements of cl. (h), in a case in which no appeal lies, may, in some cases, be remedied at a subsequent period, 6 C. L. R. 273 but the defect cannot be cured by explanation sent to the H. C. in pursuance of a rule issued. 9 C. W. N. 75 (note).

—but if the record submitted under s. 441 Cr. P. C. discloses sufficient grounds for the decision, the H. C. condones the irregularity provided no failure of justice has occurred 48 M. 253: 44 M. L. J. 84: 11 I C. 212

—the omission of the reasons for the conviction is no doubt an irregularity but unless it has prejudiced the accused there would be no interference in revision. 81 I. C. 908: 1924 Mad. 799: 25 Cr. L. J. 1084

—the omission to comply with cl. (b), of s. 263 Cr. P. C. on the part of the Bench Magistrates trying a criminal case is only an irregularity which can be cured under s. 537 where the case was non-appealable one and there was clear evidence justifying the conviction. 26 Bom L. R. 1236 *contra*. 44 M. L. J. 84: 46 M. 253: 71 I C. 212.

S. 264. (Record in appealable cases.)

—a M. passing an appealable sentence cannot make his record in the manner prescribed by section 263, but must record the evidence and frame a charge 27 C. W. N. 923, but it has been recently held that it is doubtful whether a formal charge should be framed in a summary trial even if appealable sentence is passed because s. 263 a charge.
In any case under s. 264
would be cur 191: 1926
Cal. 1202, and framing of
a formal charge in writing is not necessary in a summary trial whether the case is appealable or not. 94 I. C. 415: 1926 Lab. 301: 27 Cr. L. J. 639: 27 Punj L. R. 265; so also in 89 I C. 310: 26 Cr. L. J. 1334: 1925 Oudh. 722.

—omission to frame a formal charge under s. 264 would be cured by s. 535 Cr. P. C.: 53 I. C. 738: 98 I. C. 191: 1926 Cal. 1201, 85 I. C. 146: 1925 Bom. 138: 26 Cr. L. J. 466.

—sub-section 2 of s. 264 read with the opening words of s. 265 makes it clear that the judgment alone embodying the substance of the evidence and particulars mentioned in s. 263 is the self-contained record of the case and apart from this record there is no other. 94 I. C. 415: 1926 Lab. 301: 27 Cr. L. J. 639: 27 Punj

S. 264. (Record in appealable cases)—contd.

L. R. 265. So the appellate court is not justified in travelling outside the record in hearing an appeal from the conviction in a summary trial. 1928 Mad. 537: 29 Cr. L. J. 625: 109 I. C. 497: 55 M. L. J. 117. (1927 Mad. 294, 1926 Lsh. 304, 1926 Cal. 1202) *Ref*

—the record must be made up at the time of the trial and not subsequently from memory or from rough notes. 15 M. 83; and the judgment in appealable cases must be written by the Judge himself. 6 M. 396

—under s. 261 the judgment being the sole record of the trial the rough notes taken by the Judge cannot be attached to the record as part of it. When the evidence is bulky or the offence a complicated one the summary procedure ought not to be adopted. 87 I. C. 914: 26 Cr. L. J. 1026, this case has been followed in 1927 Bom. 426: 29 Bom. L. R. 710: 28 Cr. L. J. 537: 102 I. C. 345, where it has also been said that there is some justification for saying that such notes cannot be destroyed in cases falling under s. 255 Cr. P. C.

—where a M. made rough notes of the evidence which he subsequently copied and placed on the record and destroyed the original notes and introduced into the case the facts of another case which he tried at the same time, the procedure was irregular and illegal and the destruction of the original note was tantamount to destroying the original record with the result that there was no legal evidence on the record for the consideration of the appellate Court. 1 P. L. T. 63. *Contra*, the judgment being the sole record rough notes cannot be attached to the record as part of it. 87 I. C. 914: 26 Cr. L. J. 1026: 1925 Sind. 281, 1927 Bom. 426: 29 Bom. L. R. 710: 28 Cr. L. J. 537: 102 I. C. 345.

—notes of evidence of Presiding Magistrate cannot be called for or consulted by the Appellate Court. 99 I. C. 346: 1927 M. W. N. 40: 28 Cr. L. J. 138: 1927 M. W. N. 298: 52 M. L. J. 32.

—the substance of evidence is a matter quite distinct from the facts which may be considered as proved by the evidence. 4 L. B. R. 338: 9 Cr. L. J. 25.

—where the judgment did not embody the substance of the evidence but the M. merely recorded that the prosecution witnesses supported the complainant and that the defence evidence was conflicting and unreliable the judgment was defective and the conviction could not stand. 24 Cr. L. J. 484.

—the omission to record the substance of the evidence in the judgment renders the conviction bad and it cannot be cured by sec. 537 Cr. P. C., 1928 Bom. 433: 30 Bom. L. R. 954: 112 I. C. 21.

—substance of every separate deposition is not necessary; general substance of the witness's evidence is sufficient. 25 W. R. Cr. 6.

—when the evidence is not sufficient, the appellate court will quash the conviction. 20 W. R. Cr. 13: 11 B. L. R. 33. *Contra*, 1 A. 680. *see below*.

S. 264. (Record in appealable cases)—contd.

—the defect in recording the evidence is not always a sufficient ground for quashing the conviction. The Appellate court may require the lower Court to remedy the defect by properly recording the evidence in fresh judgment after re-examining the witnesses or it may order a re-trial. 1 A. 680.

S. 265 (Language of record and judgment).

—the judgment in appealable cases must be written by the Judge himself. 6 M. 396.

—a judgment signed by the Presiding Officer of a Bench of Magistrates is a good one but where the Presiding Officer wrote the judgment, signed and delivered it after other members, had left the Court, the judgment was not a proper judgment and conviction must be set aside. 52 M. 237: 1928 M. W. N. 785: 1928 M. 1172: 112 I. C. 61: 55 M. L. J. 576.

S. 266 ("High Court" defined).

—the court of the Judicial Commissioner of Sind is not a High Court for the purposes of Chapter XXXI Cr. P. C. and an appeal lies in Sessions trials held in that court. 1925 Sind 249: 85 I. C. 706: 26 Cr. J. 562: 19 S. L. R. 309 F. B.

S. 266. (Trial before Court of Sessions to be by jury or with assessors)

—in the absence of any notification under s. 269, a trial in the Court of Sessions must be with the aid of assessors. 18 P. R. 1898.

—the law makes no distinction as to the procedure at the trial between a trial by jury and one with the aid of assessors except as to the summing up of the case to the jury and the manner in which the verdict of the jury and opinion of the assessors are taken. 33 B. 423.

—the Sessions Judge is exactly in the same position as the jury in dealing with the evidence. 27 C. 295

—the jury form a tribunal or body with a foreman and the verdict is the verdict of the body and when there is no unanimity among the members of the body, the opinion of the majority prevails. But the assessors do not form a body and the Judge is to invite the opinion of each separately and he is the sole judge of law and fact. 24 M. 523, 11 M. L. J. 241, 13 A. 337, 6 C. W. N. 715, 14 Bom. L. R. 710.

—a trial by jury or with the aid of assessors begins only when the charge is read and the accused claims to be tried. 15 B. 514, 32 M. 220, 25 B. 694, 21 A. 206.

—a trial commencing with less than two assessors is illegal. 15 B. 514.

—continuous attendance of at least one of the same assessors throughout the trial is necessary. 13 A. 337: A. W. N. 1891, 93, 6 C. W. N. 715.

—conviction is bad when additional evidence is recorded after the discharge of the assessors. 15 A. 136: A. W. N. 1893, 50, 24 M. 523: 2 Weir 346 Ref.

S. 289 Local Government may order trials before Court of Session to be by jury.

—when a jury-case is tried with assessors and no objection is taken at the trial it cannot be taken on appeal 23 M. 632

—so also offence triable with the aid of assessors may be tried by jury 3 C. 761, 4 C. 1. It. 495, 33 It. 423, and unless the accused objects to such procedure before the verdict is delivered, he cannot be allowed to take objection in appeal 33 B. 423

—the S. J. after erroneously taking the verdict of the jury in a case triable with the aid of assessors cannot correct his mistake by treating the verdict as opinion delivered by assessors, 25 C. 655, 9 M. 44, 23 B. 624, 26 M. 243, 3 C. 765, in such a case an appeal lies only on a point of law and not on a matter of fact, 25 B. 640, F. B. 33 B. 423

—under sub-sec. (3) an accused may be simultaneously tried at one trial by the jury for offences triable by jury and with the aid of the same jurors as assessors for offences triable with the aid of assessors 2, L. W. 933, 30 I. C. 1305, but the Judge must always preserve a distinction between the two cases. He must separately record the verdict of the jury in the jury case and the opinions of the jurors as assessors in the assessor-case. If he disagrees with the verdict of the jury he must not send the whole case to the High Court but must send only the jury-case under s. 307 and pass judgment in assessor-case under s. 309 Cr. P. C. 9 Bom. L. R. 1057, Ratanlal 600. Moreover in such cases all the jurors in the jury-case must serve as assessors in the assessor-case, 26 M. 593, 21 M. L. J. 530, 10 M. L. T. 22, 10 I. C. 231.

—the words "same trial" in clause (3) cannot be read as taking away the right of appeal given by section 420 Cr. P. C. 38 I. C. 730 (M).

—sub section (3) provides for certain advantages to the accused, such as trial by jurors as assessors for offence not triable by jury and it would be manifestly illegal to deprive him of such advantages by splitting up the trial. 97 I. C. 364; 1927 Pat. 13; 6 Pat. 308; 27 Cr. L. J. 1100.

—where the accused was charged with an offence under s. 412 I. P. C. and tried by a jury but was convicted of an offence under s. 411 I. P. C. though there was no charge framed for this offence, held that the clause (3) of this section did not apply as no charge was framed under s. 411, and under s. 238 Cr. P. C. the accused can be convicted for a minor offence; so no appeal lies on facts under s. 418 of this Code. 94 I. C. 602; 1926 Bom. 134; 27 Cr. L. J. 650; 27 Bom. L. R. 1416.

—the S. J. cannot be allowed to take the verdict of the jury as opinion delivered by assessors, 25 C. 655, 9 M. 44, 23 B. 624, 26 M. 243, 3 C. 765, in such a case an appeal lies only on a point of law and not on a matter of fact, 25 B. 640, F. B. 33 B. 423

S. 269. Local Government may order trials before Court of Session to be by jury—*contd.*

—but where the accused was originally charged under ss. 451, 392 and 397 I. P. C. all of which offences were triable by a jury and the jury returned a verdict of not guilty with regard to the offences under the said section but they at the same time found the accused guilty of voluntarily causing grievous hurt with dangerous weapon which offence is triable by a Judge with assessors, it was contended that opinions of the individual member of the jury were not taken as assessors, but that the irregularity could be cured under s. 536 Cr P C, 1927 M. W. N. 299.

—acquittal by assessors on charge of abetment of dacoity with murder has subsequent conviction by jury of receiving stolen property on the same facts as in the previous case. 24 M. 641 : 2 Weir 458, 27 M. 236, 13 C. L. J. 739, 36 M. 308 : 13 M. L. T. 360, 24 M. L. J. 463 : 14 C. L. J. 241 *Ref.*

—trial by jury ceases in a district when the district ceases to belong to a division to which trial by jury has been extended. 8 W. R. Cr 39

—the words "trial shall be by jury in any district" mean that the trial shall be by jury if the case is tried in a district where such notification is in force. The clause does not mean that the trial shall be by jury of offences committed in any district, & even if it is transferred from a jury-district to a district where jury trial does not prevail. 37 I. C. 35, 10 S. L. R. 154 : 18 Cr. L. J. 51.

—where an offence is not made triable by jury it should not be so tried. 22 O. C. 130, 52 I. C. 659

—the H. C. has power to transfer a case from a non jury district to a jury district under s. 526 (d) on the ground of convenience of parties and the H. C. cannot refuse to do so on the ground that by such a transfer the accused will get the benefit of a jury trial where previously he had none. 8 C. L. J. 59.

S. 270. Trial before Court of Sessions to be conducted by Public Prosecutor.

—the absence of a Public Prosecutor in a particular case is at most an irregularity curable under s. 537. 35 P. R. 1887.

—the public prosecutor may avail himself of the services of the pleader engaged by the private complainant. 11 B. H. C. R. 102

—an advocate of the H. C. may appear on behalf of the prosecution in the Court of Sessions and may conduct the prosecution without being specially empowered by the M. for that purpose. 23 W. R. 14.

—it is highly undesirable that the prosecution should be conducted by Police Officers. 13 W. R. 18.

S. 271. Commencement of trial.

When trial begins.

—the trial in the Court of Sessions begins when the accused appears in that court and after the jurors or assessors have been chosen. 93 I. C. 149 : 1923 Lab. 446 : 26 Punj. L. R. 415

S. 271. Charge

—the charge must be read out and fully explained to the accused 5 C. 826, 2 Weir 336, 3 Bom. L. R. 499, 9 M. 61.

—the charge sheet to which the accused is called upon to plead is a very important document, it should be drawn up and considered with extreme care and caution so that the accused may have full knowledge of the offence with which he is charged and the Appellate Court also may have clear idea of it. It should be read over and explained to the accused and every addition and alteration made in the charge must also be read over and explained; when this is not done the record should contain explanation thereof, 18 A. L. J. 442

Plea of guilty.

—the accused can plead guilty under s. 271 or he can claim to be tried under s. 272 or he can refuse to plead which is taken to be the same as claiming to be tried. The plea of "not guilty" is not recognised by the Code, 41 C. 1072.

—if the accused pleads guilty the plea must be recorded, 5 M. L. T. 73, 5 M. L. T. 216 11 Cr. L. J. 193; 4 Ind. C. 1126, 7 C. 96, 5 A. L. J. 157, when it is given in foreign language it may be recorded in the language conveyed by the interpreter, 5 C. 826.

—the accused must himself plead and not by pleader or counsel, 15 W. R. Cr. 42, 6 Bom. L. R. 861.

—admission by pleader, specially by one engaged by the Court for the accused and not by the accused himself is not binding on him 2 Bom. L. R. 731.

—after the accused has claimed to be tried, and confessional statement made by him must be laid before the jury, it should not be

judge may record a finding

Weir 334, 7 Bom. L. R. 731.

to plead in the alternative,

charge. Rat. Un. Cr. 327.

20 B. 144.

—the plea of guilt must be the admission of every fact constituting the offence. 8 Bom. L. R. 240, 2 Weir 336, 25 W. R. Cr. 23, 11 C. 410, 11 W. R. 53, 7 W. R. 39, 1886 A. W. N. 66

—the statement of the accused as a whole must be taken. 25 W. R. Cr. 23, 14 B. 564, Ratapal 698, 5 N. W. P. H. C. R. 110.

—the accused must distinctly and unequivocally admit the guilt, otherwise it is not sufficient. 5 A. L. J. 157.

—where the accused is charged with having made two contradictory statements and he pleads guilty to one charge, that does not show that he pleads not guilty in respect of the other charge. 8 W. R. Cr. 6.

—under clause (2) all that is incumbent on the Court is to record his plea of guilty. It is not obligatory on the Court to convict

S. 271. Plea of guilty—contd.

—where the accused pleads guilty but not to the particular offence charged, the plea is really one of not guilty. 11 W. R. Cr. 53, 7 W. R. Cr. 39, 11 C. 410

—the S. J. is not to see that any statement accompanying the plea is true or false Rat. Un Cr. 532

—when the accused pleads guilty to one charge he cannot, on such plea, be convicted on another charge. 2 Weir 335, 10 Cr. L. J. 5, Rat. Un. Cr. 386, 410, 413, 698

—it is discretionary with the court to refuse to accept the plea and to try the case 23 M. 151, 19 A. 119, 13 C. W. N. 552: 9 C. L. J. 291, 10 Cr. L. J. 484, 19 B. 195, 23 A. 53, 4 B. L. R. Ap. 101.

—the recording of the plea of guilty after the Judge decides to try the case is meaningless unless he accepts it. 9 C. L. J. 53: 10 Cr. L. J. 325, 19 B. 195, 23 A. 53, 13 C. W. N. 552: 9 C. L. J. 291: 10 Cr. L. J. 484.

—a plea of not guilty is not recognised by the Code. 18 C. W. N. 723

—it is against the spirit of law to postpone the conviction so that the accused, who has pleaded guilty, may technically be said to be jointly tried with the co-accused creating an opportunity for the accused to withdraw his plea.

to be admissible under s 30
C. W. N. 552: 9 C. L. J. 291:
W. N. 742, 17 A. 524, 22 A. 445,
F. B., 11 P. R. 1900, 5 A. L. J.

rambling statements the S. Judge should not rely on that. 19 A. 119, 1908 A. W. N. 54: 5 A. L. J. 157: 7 Cr. L. J. 295.

—where the prisoner is not convicted on his plea the trial should be proceeded in the usual way under s. 272. 6 Bom. L. R. 671.

—the S. J. cannot rely on the plea of guilt made at the close of the trial but should take the verdict of the jury. 2 Weir 334, 7 Bom. L. R. 731.

—an accused whose plea amounts to not guilty cannot be convicted on the uncorroborated confession of the accused made before the committing Magistrate. 1886 A. W. N. 22, 23 B. 316, 2 N. W. P. H. C. R. 479.

—when the accused pleaded guilty his conviction was valid although tried without the aid of assessors. 10 W. R. Cr. 43: 2 B. L. R. 23 F. B., 5 W. R. 31 Cr.

—the word "thereon" in cl. (2) shows that the conviction must be upon the plea recorded before the Sessions Judge and not on any confession made before the committing Magistrate. 2 N. W. P. H. C. R. 479. In acting upon a confession made before the committing M. but retracted at the trial, some corroborative evidence is necessary. 1898 A. W. N. 22, 23 B. 316.

—the accused cannot be convicted on the plea of guilty of an offence other than that specifically charged and pleaded. 2 Weir 335, 3 S. L. R. 58, Ratanlal 410, 413.

S. 271. Acceptance of plea of guilty

—the provisions of section 271 Cr. P. C., that the plea should be recorded and the accused may be convicted thereon clearly leaves it open to the court to refuse to accept the plea and lay the case before the jury or assessors, or in the case of Magistrate to try the question of the accused's guilt himself 13 C. W. N. 552.

—it is discretionary with the court to accept or not the plea of guilty 2 Weir 335 20 O. C. 136, 23 M. 151, 13 W. R. 55

—it is discretionary with the court to refuse to accept the plea and try the case 23 M. 151, 19 A. 119, 13 C. W. N. 552; 9 O. L. J. 291 10 Cr. L. J. 484, 19 B. 195, 23 A. 53, 4 B. L. R. Ap. 101.

—under clause (2) all that is incumbent on the court is to record the plea of guilty. It is not obligatory on the court to convict him thereon, the conviction on the plea of guilty being discretionary 93 I. C. 241; 1926 All. 318; 27 Cr. L. J. 449; 24 A. L. J. 318, 1928 Cal. 775; 115 I. C. 582; 30 Cr. L. J. 508.

—but it was held in some cases that the recording of the plea of guilty after the Judge decides to try the case is meaningless unless he accepts it. 9 O. L. J. 55, 10 Cr. L. J. 35, 19 B. 195, 23 A. 53, 13 C. W. N. 552; 9 O. L. J. 291; 10 Cr. L. J. 484

—in a charge of capital offence plea of guilty should not be accepted. 1905 P. R. 54, 19 Bom. L. R. 356, 19 A. 119, 8 Bom. L. R. 240, 40 I. C. 699 *Contra*. 24 Cr. L. J. 570 (Neg.)

—unless the court is perfectly satisfied that the accused knew exactly what was implied by his plea of guilty, the case should be tried, specially where the accused is an illiterate person. 20 A. L. J. 326, 669.

Effect of plea of guilty on co-accused.

—where several persons are being tried jointly for the same offence and some of them plead guilty, it is unfair to defer convicting those who have pleaded guilty merely in order that their confessions may be considered against the other accused. 23 A. 53.

—where an accused person has pleaded guilty and the court is prepared to convict on that plea, it is contrary to the spirit of the law to postpone the conviction so that the person who had pleaded guilty may technically be said to be tried jointly for the same offence with other co-accused and any statement in the nature of a confession may be used against them. 30 A. 540, 12 A. L. J. 1239.

—where an accused person has pleaded guilty nothing remains to be tried as between him and the Crown and he becomes a competent witness against other accused. 25 M. 61 P. C.

—where two persons were charged with murder and one pleaded guilty, it was held that after such plea he could not be treated as being jointly tried with the other. 19 B. 195.

—but the above cases reported in 23 A. 53, 30 A. 540, 25 M. 61 and 19 B. 195 were referred to and explained in a case by the Calcutta H. C. where it was held that when one of several accused who are on joint trial pleads guilty, it is not always incumbent on the court to accept the plea and remove him from the dock.

S. 271. Effect of plea of guilty on co-accused - contd.

The court may for sufficient reasons decline to accept the plea and continue to try him along with other accused and then in the trial take his confession into consideration against his co-accused. 13 C. W. N. 552.

—if the Court accepts the plea of guilty and convicts the accused, his trial is at an end and he may be called as a witness against or for any co-accused 23 M. 151.

S. 272. Refusal to plead or claim to be tried.

—when the accused remains silent it should be ascertained whether he is obstinately mute or dumb, if he be so found, the plea of not guilty should be recorded and the trial should proceed. Rat. Un Cr. 19.

—if the accused refuses to plead or claims to be tried, the court must proceed to try the case. 2 B. L. R. 23 F. B.

—the expression "the same jury may try as many cases &c.," means that one trial is to follow the other. 6 C 96 p. 99; 6 C. L. R. 521.

S. 273. (Entry on unsustainable charges).

—application under this sec. should be disposed of by the H. C. in its original criminal jurisdiction. 9 C. 397

—this sec. gives a special power to the H. C. It has no reference to illegal commitment. Having reference to the words "any charge or any portion thereof is clearly unsustainable" it is clear that the sec. is intended to provide a short and effective way by which charges having no merits may be disposed of. 1929 Cal 756; 1929 Cr. C. 468 F. B.

—an entry under this sec. has not the effect of an acquittal for the purpose of sec 403, 9 C. 397, 21 C. 97.

S. 274. (Number of jury).

N B.—In trials before the Sessions Judge as regards the number of jurors the word "five" has been substituted for the word "three" and in murder cases, the number has been fixed from seven to nine.

—where the accused is charged with an offence punishable with death the jury should consist of not less than seven persons

trial. 55 C. 794; 1928 Cal
other words in such a case
the first instance. Where

less than eighteen persons were summoned and the jury of only seven persons were empanelled for the trial of the murder case the trial was vitiated. 33 C. W. N. 1053 In another murder case where only 14

and seven jurors were
r compliance with S.
ated. 33 C. W. N. 692.
C. W. N. 1053; 122
ions having not been

S. 274. (Number of jury)—*contd*

summoned in murder case the trials were held to be vitiated. (But see the following F. B. case)

—but in a recent Full Bench case of the Calcutta H. C. it has been held that in a murder case where the number of jurors summoned is 14 and nine of them appear and are chosen by lot, the trial is not bad by reason of the fact that only 14 jurors have been summoned in contravention of the provision of ss. 274 and 326. 31 C. W. N. 296; 51 C. L. J. 171; 1930 C. 212; 123 I. C. 664; 31 Cr. L. J. 336; 1930 Cr. C. 212; F. B., 1927 P. C. 41. *Approved*, 26 M. P. C. Dist., (1930 C. 60, 33 C. W. N. 1053, 1054) *overruled*.

—order of the Local Government as to the number of the jury must be strictly followed. 26 A. 211; 1903 A. W. N. 1

—when it appeared in reference that the jurors were divided in the proportion of 3: 2 and it also appeared that one of the jurors who gave the verdict of not guilty was not entitled to sit on the jury as he had not been summoned, held that as the court was not properly constituted the verdict counted for nothing but it could be supported on the facts and that it was not a case to be re-tried. 46 C. L. J. 241; 28 Cr. L. J. 874; 104 I. C. 714; 1927 Cal. 820

S. 275. (Jury for trial of European and Indian British subjects and others) as amended.

N. B. This sec. has been redrafted giving the Indians on the one hand and the Europeans or Americans on the other the right to claim a mixed jury containing a majority of their own countrymen.

to be tried by a jury to be chosen by lot from a list of names to be furnished by the Magistrate.

with as such before the committing Presidency Magistrate he will
C., to be tried by a jury the
according to the provisions of
41 C. L. J. 541; 99 I. C. 930; 1927 Cal. 242; 28 Cr. L. J. 194.

—as Indian British subject claiming to be dealt with as such must put his claim before the M. before whom he is brought for the purpose of enquiry or trial. This applies to Presidency Magistrates as well as to Magistrates in the mufassal. 51 C. 980; 29 C. W. N. 384; 84 I. C. 929; 1925 Cal. 384; 26 Cr. L. J. 385.

S. 276. Jurors to be chosen by lot.

—the trial is held if the provisions of this section are not complied with. 41 C. L. J. 541; 99 I. C. 930; 1927 Cal. 242; 28 Cr. L. J. 194.

—the names of the jury to be "chosen by lot" shall be drawn out of the box containing the names of all persons summoned to act as jurors. 1 Bom. 462.

S. 276. Jurors to be chosen by lot—contd. 1

—where the judge fails to choose by lot, the grave irregularity caused thereby is not rectified by s. 537. 7 C. W. N. 188. *But see below.* 29 C. W. N. 652.

—the violation of the imperative procedure laid down in sec. 276, is such as cannot be cured by s. 537. 9 Ind. C. 278; 8 A. L. J. 182; 33 A. 385; 12 Cr. L. J. 46

—where the requisite number of jurors being absent, the deficiency was made up from other persons present in court who were called as jurors, the trial was not vitiated though they were not in the jury list and were not chosen by lot. 29 C. W. N. 652; 86 I. C. 467; 26 Cr. L. J. 819; 1925 Cal. 798.

—where out of 12 jurors summoned to attend only 5 appeared and those were empanelled as jurors, the trial was held to be illegal and not irregular only as there were not enough jurors present to permit of their being chosen by lot, the proper course being to make good the deficit by choosing some other persons who were present and adding their names to the five jurors and from the whole body choosing the necessary five by lot to act as jury. 44 C. L. J. 541; 99 I. C. 930; 1927 Cal. 242; 28 Cr. L. J. 194, this case has been followed in 46 C. L. J. 160; 31 C. W. N. 1102; 104 I. C. 905; 1927 Cal. 787; 28 Cr. L. J. 889 which has held that the word "required" in the proviso must refer and is related to the words immediately preceding viz., "in case of deficiency of persons summoned" and the word "chosen" means chosen by lot. So the deficiency cannot be made good otherwise than by lottery from those persons present in court. Similar case. 104 I. C. 459; 28 Cr. L. J. 843; 1928 Pat. 31; 7 Pat. 50; 9 Pat. L. T. 51, but this case has been dissented from in the following case reported in 54 C. 1026, which has referred to the above case reported in 29 C. W. N. 652; 66 I. C. 467; 26 C. L. J. 819; 1925 Cal. 798.

—this section requires that the jurors shall be chosen by lot from the persons summoned to act as such. 54 C. 1026; 31 C. W. N. 711; 102 I. C. 903; 1927 Cal. 593; 28 Cr. L. J. 615, but this provision of choosing by lot is applicable only when the persons summoned are present in such number as to make it possible to choose them by lot. When such number is not present the Judge is to take the help of persons present in court to form the jury. The words "deficiency" and "number of jurors required" in the second proviso mean deficiency in the number of jurors required to make up the jury and not to make up a sufficient number for the purpose of selection by lot. 52 C. 1026; 31 C. W. N. 711; 102 I. C. 903; 1927 Cal. 593; 28 Cr. L. J. 615.

—deficiency can be filled up only by empanelling persons present in court. But if persons not present in court are asked to come in court and are included in the panel the trial is vitiated. 1928 Cal. 551; 113 I. C. 280; 30 Cr. L. J. 120, 48 C. L. J. 479; 113 I. C. 328; 30 Cr. L. J. 136, 56 C. 835; 1929 Cal. 728; 1929 Cr. C. 364; 33 C. W. N. 722; 121 I. C. 569; 31 Cr. L. J. 281.

—where ten jurors were summoned to attend but only five appeared and the court chose those five persons as jurors by draw-

S. 276 Jacara to be changed by lat-confd

ing the lot from the names of all summoned and the accused raised no objection to the procedure, held that there was no irregularity and if there was any it was curable by s 537 101 L.C. 897-8 Pat. L.T. 560-25 Cr. L.J. 881-2 1st. 61 1928 1st. 1.

— principles governing choosing by lot,—co-optation from bystanders only,—if the accused objects the court is to proceed under s. 279 (2), illustrations of legality and illegality in the composition of jury 35 C. 371-32 C. W. N. 221: 1928 Cal 83: 109 I. C. 577: 29 Cr. L. J. 437 43 C. L. J. 43 f. B.

—the scope of ss 276 to 279 is to secure an impartial trial avoiding any intentional selection of jurors. S 279 (2) introduces an exception to the general rule but this is only in the exceptional condition stated in emergencies. 46 C. L. J. 160; 31 C. W. N. 1102; 104 I. C. 905; 1932 Cal. 287; 28 Cr. L. J. 849.

—although it is a matter of discretion the trial for an offence under a 124 I P C should be by special jury as the offence is punishable with the highest punishment known 1928 Bom. 74 : 30 Bom. L. R. 313 : 108 I.C 509 : 29 Cr. L. J. 411, 10 Bom. L. R. 859 *Ref.*

S. 277. Names of jurors to be called.

—where the Judge exempted most of the jurors present merely on their representation and without any reason being stated as against each of them nor any formal decision being recorded, the proceedings were irregular, which could not be cured by a 537. 7 C. W. N. 188, 33 A. 385; 8 A. L. J. 182; 12 Cr. L. J. 46; 9 Ind. C. 278 *Ref*

—where the senior pleader for the defence remaining absent the junior pleader applied for adjournment which being refused he withdrew from the case and the court appointed another pleader to conduct the case and the senior pleader appearing later was not

under

not

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115 L. C. 561.

S. 278 Grounds of objection.

—being a clerk in the office of the Magistrate is not sufficient to disqualify a person to act as a jury. 7 C. 42

—an objection to the effect that there was litigation between the accused's master and the juror's principal, should be allowed. 104 I. C. 459: 28 Cr. L. J. 843: 1928 Pat. 31: 7 Pat. 50: 9 Pat. L. T. 57

—where the Judge after recursa to lottery proceeded to choose the jury from amongst the persona able to read English the procedure did not exceed his inherent powers and the provisions of this section. 51 C. L. J. 352 : 1930 C. 437.

S. 279. Declaration of objection.

—the manner of choosing by lot provided by sec. 276 applies to juror attending in obedience to a summons and not to persons

S. 279. Decision of objection—contd.

chosen from those present in court and the defects are cured by s. 537. 18 Cr. L. J. 15: 1917 M. W. N. 1, *but see the cases under sec. 176.*

—s. 279 (2) permits a person not chosen by lot to be empanelled in exceptional cases of emergencies. But where the number of jurors present was equal to the number chosen and in others the number was deficient and the court exercised the special power under s. 279 (2), held that the principle of choosing by lot had been violated and retrial was ordered. 31 C. W. N. 1102: 46 C. L. J. 160: 104 I. C. 905: 1927 Cal. 787: 28 Cr. L. J. 889.

S. 282. Procedure when juror ceases to attend.

—"juror unable to understand the language etc" has been interpreted to include the case of juror who is *deaf and partly blind*. 19 M. 375: 6 M. L. J. 195. 2 Weir 680, 6 C. W. N. 717 *fol.*

—where after two witnesses were examined it was found that one of the juror was deaf and he was discharged and another juror added, but instead of beginning the trial anew the judge called up those two witnesses and had their statements read over, the trial was invalid. 36 A. 481: 15 Cr. L. J. 538: 12 A. L. J. 803: 24 Ind. C. 916.

—where the question of misconduct on the part of the jury or other similar sufficient cause arises, the S. J. has inherent power to discharge the jury and empanel another. 50 C. 872: 37 C. L. J. 595

—though the Cr. P. C. does not provide any procedure to discharge a jury on the ground of misconduct every Judge has an inherent power to discharge a jury when he is satisfied on inquiry that reasonable grounds exist for exercising the discretion to discharge a jury on suspicion. But suspicion in the mind of the Public Prosecutor is not valid ground for discharging a jury; something much more tangible than that is necessary. 56 C. 1032: 33 C. W. N. 425: 31 Cr. L. J. 366. 122 I. C. 194: 1929 Cal. 343.

—where after the jury had been empanelled and sworn and foreman appointed another case was heard and in the meantime the foreman appearing to have talked with the Court-Inspector the Judge discharged him and put in another present in court-room, the procedure was not illegal and the Judge need not have discharged the entire jury. 32 C. W. N. 945: 56 C. 150: 1929 Cal. 57: 115 I. C. 258: 30 Cr. L. J. 435.

—when one of the jurors is prevented from attending the trial the court can either postpone the case or discharge the jury. But when such a juror is going to be able to attend in a very short time it is a wrong exercise of discretion on the part of the judge to discharge the jury, though such exercise of discretion should not be interfered with by the H. C. in revision. 31 C. W. N. 144: 99 I. C. 349: 1927 Cal. 199: 28 Cr. L. J. 141.

—a jury should be re-summoned after considerable lapse of time only under very exceptional circumstances. *above case.*

S. 283 Discharge of jury in case of sickness of prisoners.

—A J. cannot discharge a jury on account of the absence of a witness. 4 Bom. L. R. 939

S. 284. Assessors how chosen.

—where a criminal trial takes place after the 1st Sept. 1923 with only two assessors where the law requires at least three, the proceedings are null and void. In cases triable with the aid of assessors the judge together with assessors constitute the court. 77 I. C. 811 20 N. L. R. 129 1921 Nag. 287, 81 I. C. 711.

—S. 284 as amended requires that there shall be at least three assessors. 81 I. C. 711; 27 O. C. 213 1925 Oudh 110.

—where four assessors are not chosen, it is right that the Court should give reasons in the order-sheet to explain the impracticability of choosing four but absence of that though is irregular, does not vitiate trial. 83 I. C. 153; 26 Cr. L. J. 713; 1925 P. 381; 7 Pat. L. T. 14

—the real object of appointing assessors is to assist the court. 7 B. L. R. 63, it must be presumed, until the contrary is shown, that the assessors will do their duty. 1887 A. W. N. 139.

—such persons can be chosen by the Judge to act as assessors as have been summoned as such for the purposes of the trial 35 A. 570; 11 A. L. J. 930; 14 Cr. L. J. 654; 21 Ind. C. 894, A. W. N., 894, 207 Ref

—in selecting assessors, the judge must have regard to the nature of the case, to the person who is tried, to the nature of the evidence to be brought against him and to the public feeling. The assessors ought not to be pleaders, or young men fresh from college and devoid of experience. They must be persons of independent condition in life, men of judgment and of experience. 23 W. R. Cr 35 P. 39

—a trial does not begin with the reading of the charge but with the commencement of proceeding at which the assessors can give their aid. 15 B. 314, 25 B. 694.

—the attendance of assessor having been dispensed with before the commencement of the trial, it could not be legally proceeded with unless another assessor was appointed, see above.

—commencing the trial with one assessor vitiates the whole proceeding and it cannot be cured by a. 537. 25 B. 694 21 A. 106.

—the trial is bad if additional evidence is taken after the discharge of the assessor. 15 A. 125. — If the assessor is the last remaining assessor, 337, or if there is blindness or if neither assessor is present.

S. 284 A. Assessors for trial of European and Indian British subjects and others

The sec. has been newly added. Under it Indians and Europeans can claim to be tried before their own countrymen as assessors,

S. 284 A. Assessors for trial of European and Indian British subjects and others—contd.

—if the accused intends to avail himself of the provision of this sec. he must make a claim to the privilege conferred by it. failure to make a claim will amount to waiver. 1912 P. R. 6.

S. 285. Procedure when assessor is unable to attend.

—the law contemplates the continuous attendance of at least one assessor throughout the trial. 13 A. 337.

—when the trial begins and ends with one assessor only, it is void. 25 B. 694, Rat. Un. Cr. 695.

—the assessors unlike the jury, give their opinions separately and not as members of the body, so that where one of them was wrongly allowed to take part in the trial and give his opinions, it did not vitiate the opinion of another assessor validly given. 24 M. 523.

—the trial is vitiated if neither of the assessors remains present throughout. h C W N. 715

—where out of three assessors chosen, one was found to be deaf before the commencement of the trial and of the remaining two one was discovered to be deaf after the public prosecutor closed his case, the trial was bad as it was really held by one capable assessor. 21 A 106, 25 B. 694, 19 M. 375.

—additional evidence after discharge of assessor vitiates trial. 15 A. 136.

S. 286. Opening case of prosecution.

—it is *prima facie* the duty of the prosecutor to call the witness who must be able to give important information. If such witness is not called without sufficient reason the Court may draw an inference adverse to the prosecution. The only thing that can relieve the prosecutor from such witnesses is the reasonable belief that if called, they would not speak the truth. The only legitimate object of a prosecution is to secure not a conviction, but that justice be done. 8 C. 121 p. 124 : 10 C L R. 151, 14 A. 531, 16 A. 84, 8 P. W. R. 1909 : 10 Cr. L. J. 321.

—the public prosecutor is not bound to call any witness who will not, in his opinion, speak the truth. 7 A. 904, 11 Bom. L. R. 1162, 8 C. 121, 15 A. 6.

—all the witnesses returned in the calender as witnesses for the Crown are bound to be in attendance until the conclusion of the trial unless they are released by the Court. 16 A. 84 F. B.

—the prosecution should call all the witnesses able to give important information. 10 C. 1070 and is bound to examine witnesses present at search. 9 C. W. N. 438.

—merely tendering an witness for cross-examination is not a practice which should be encouraged specially in murder case. 1929 Mad. 906 : 1929 M. W. N. 799 : 1929 Cr. O. 685.

S. 286. Opening case of prosecution—*contd.*

—no verdict should be pronounced before the examination of all the prosecution witnesses. 20 M. 445.

—the demeanour of the witness may be important for the assessors or judge towards forming an opinion of his truth. 9 M. 83.

—where an accused is on his trial on a capital charge, it is not expedient that the court should convict him even upon a plea of guilty entered before the trial court itself. 10 A. L. J. 669.

—recording the deposition taken before the committing M. and cross-examination thereon to expedite the trial is bad. 9 M. 83
5 C P Cr 33, 2 Weir 360

—to contradict a witness by previous deposition before the C. M. the whole deposition must be put before him. 7 A. 862.

—a witness may be allowed to explain previous deposition. 1894 A W N 57, but not to prejudice the accused. 13 W. R. Cr. 18.

—the S. J cannot stop the examination of and turn out a witness for perjury. 1900 A. W. N. 149.

—witness though not examined in chief, may be cross-examined by the prisoner. 5 C. 614, 15 W. R. Cr. 34.

—in capital cases every opportunity should be given to the accused to cross-examine the prosecution witness. 15 Cr. L. J. 596.

—the prosecution cannot demand as of right to examine any witness not examined before C. M. 14 A 212.

—the *post mortem* report is not admissible in evidence except to contradict the officer preparing it. He may use it for the purpose of refreshing his memory. 27 O 295

S. 287. Examination of accused before M. to be evidence

—the examination of the accused should be put in before the accused is called upon to enter upon his defence. 2 Weir 361.

—examination illegally recorded should not be put in. 4 L. B. R. 244. 8 Cr L. J. 62.

—it is obligatory to put in the examination of the accused. 13 W. R. Cr. 63; if it is not tendered the Judge is bound to call for it. 15 M. 352.

—statement of accused made before the jail superintendent and confirmed before the committing M., is admissible under this sec. 32 M. 3 p. 15.

—the whole statement must be read out. 5 M. H. C. R. Ap. 4.

—the word "committing M." in ss 287 and 288 is merely a compendious way of referring to the M. or Ms., who held the preliminary inquiry. 31 M. 40

S. 288. Evidence given at preliminary inquiry admissible.**Amendments.**

~~now~~ (i) The word "recorded" has been substituted for "taken."

(ii) "Under Chap. XVIII" have been substituted for "before committing Magistrate."

S. 288. Amendments—*contd.*

(iii) *"For all purposes subject to the provisions of the Indian Evidence Act 1872" have been added.*

Object of the section and of the amendment.

—the substitution of the words "duly recorded in the presence of the accused under Chap. XVIII" for the words "duly taken in the presence of the accused before the committing Magistrate," by the amendment, is intended to cover cases where evidence may be recorded by the committing Magistrate but not for the purpose of commitment a procedure laid down in the Indian Evidence Act, 1872, evidence recorded in the presence of the accused. 42 C. L. J. 205; 90 I. C. 37; 26 Cr. L. J. 1577; 53 C. 181; 1925 Cal. 235.

—the words "for all purposes" added by the amendment was intended to remove any limitation to the value of any evidence recorded by the committing M. and admitted by the Sessions J. as evidence in the case. The evidence recorded by the committing M. and admitted under the section must be treated as evidence for all purposes even as the basis of finding or verdict and on a par with any other evidence before the Session Court or as substantive evidence on which the verdict of the jury or judgment of the judge can be based. 42 C. L. J. 205; 90 I. C. 37; 26 Cr. L. J. 1577.

—under the amendment the evidence given in before the committing M. is admissible at the trial as substantive evidence and not for the purposes of corroboration. The words "subject to the provisions of the Indian Evidence Act" are merely to prevent the evidence recorded by the committing Magistrate from being recorded by the committing Magistrate. 1925 Sind 289, 42 C. L. J. 205; 90 I. C. 37; 26 Cr. L. J. 1577; 53 C. 181; 1925 Cal. 235; 26 Punj. L. R. 361; 1925 927 All. 479; 27 Cr. L. J. 1577. The evidence recorded by the committing Magistrate and admitted by the Sessions J. could not be used under some sections of the Indian Evidence Act as that would render the permission of section 288 unnecessary and superfluous. 42 C. L. J. 111; 90 I. C. 433; 26 C. L. J. 1553; so also the Patna H. C. has held that the

S. 288. Object of the section and of amendment—*cont.*

—the object of the amendment of s. 289 is that evidence duly taken before a Magistrate can be used for all purposes in a trial court so long as the testimony is of evidentiary value as regards the weight to be attached to such evidence, the principle is well settled that, unless there is clearly present, besides the evidence given before the M., evidence which will show that the evidence given before the M. should be preferred to and substituted for that given before the S. J., the evidence given before the M. cannot be utilized to support a conviction. 3 Pat 781 : 1925 P. 51 : 81 I. C. 334 : 6 Pat. L. T. 53 : 26 Cr. L. J. 270, 94 I. C. 258 : 1926 Pat. 440 : 27 Cr. L. J. 591 : 1926 P. H. C. C. 167.

—the object of this sec. is to provide for the contingency that may arise when a witness holds back information and evidence and tells a different story. 2 A. 616

—effect of the new amendment on evidence at the Sessions trial inconsistent with the earlier statements under ss. 258 and 161. 1925 N. W. N. 319

—under this sec. as amended, it is within the discretion of the Sessions Judge to treat the evidence taken before a committing M. as substantive evidence on the case. 27 Bom. L. R. 113 : 86 I. C. 145 : 26 Cr. L. J. 705.

—s. 284 clearly intends that the evidence taken before the committing M. where the witnesses produced are examined at the subsequent trial, may be treated as substantive evidence in the case. It is a matter of discretion of the Judge whether he thinks that evidence should be used in the interests of justice. 3 Pat 517 : 4 Pat. L. T. 462 : 73 I. C. 561.

Application of the section.

—this sec has no operation unless the witness at the trial makes statements inconsistent with those made before the C. M. 24 W. K. Cr. 11, 4 C. W. N. 49.

—nor where the witness is not produced and examined at the trial. 16 N. L. R. 30, 1915 M. W. N. 541, 9 M. 83, 1 W. R. 14, 6 C. P. L. R. 33.

—statements made before the committing M. but retracted before the Sessions may be relied upon by the S. J. under this sec. 33 M. L. T. 159 : 45 M. L. J. 602, 93 I. C. 230 : 27 Cr. L. J. 438 : 1926 Lah. 399, but before ensuing such evidence the witness should be asked to explain the discrepancy. 1929 Lah. 111 : 29 Cr. L. J. 1047 : 10 Lah. L. J. 460, 112 I. C. 471.

—before using the statement made by a witness before the committing M. the Sessions Judge must inform the accused that he is going to do that. 1929 Nag. 233 : 30 Cr. L. J. 333 : 1929 Cr. C. 257 : 114 I. C. 609.

—Court can rely on witnesses' statements before committing M. though varied before the Sessions Judge when satisfied of their truth. 85 I. C. 130 : 47 A. 276 : 1925 A. 185.

—this section empowers the Sessions Judge to treat as substantive evidence at the trial deposition made before the committing

S. 288 Application of the section—contd.

M. but subsequently repudiated under police pressure, 1925 Lah. 399. 6 Lab 171 : 26 Punj L. R. 304, such evidence may be treated as substantive evidence and not merely for the purpose of corroboration 42 C. L. J. 111 : 90 I. C. 433 : 26 Cr. L. J. 1553 : 1926 Cal. 105, 88 I. C. 7 : 26 Cr. L. J. 1063 : 1925 Sind 289, 88 I. C. 861 : 26 Cr. L. J. 1245 · 1925 Lah. 452, it must be treated as evidence for all purposes even as the basis of finding or verdict and on a par with any other evidence before the Sessions Court or as a substantive evidence on which the verdict of the jury or the judgment of the Judge can be based. 42 C. L. J. 205 53 C. 181 : 1926 Cal. 235. 90 I. C. 37 : 26 Cr. L. J. 1557, 50 C. L. J. 534 · 1930 Cal. 228 : 1930 Cr. C. 196, but s. 145 Evi. Act. governs the position in so far as these statements are used for contradicting the witness either mainly or incidentally. 1930 Cr. C. 710 : 1930 Pat. 338 : 1922 Pat. 40, 7 All. 862 *Approved* 28 A. 683 *expl* 4 C. W. N. 49 *Ref.*

—where a witness was not examined in the S. C. with regard to the particular statements made by him before the committing M. the S. J. could not properly admit latter statements in evidence under this sec. 4 C. W. N. 49.

—when an approver repudiates his statements before the C. M. it is not admissible. 21 A. 175

—to apply this sec. the whole of the previous statement is to be treated as evidence and not only a part of it. 1929 Nag. 233 · 1929 Cr. C. 257 : 114 I. C. 106 30 Cr. L. J. 333.

Duly recorded in the presence of the accused.

—the evidence referred to in the sec. must have been recorded in the presence of the accused allowing him to cross examine the witness 21 C. 641 p. 665, 3 M. 481, 7 A. 862, 21 A. 111, 32 A. 415, 3. P. R. 1904, 23 C. 361, 11 B. H. C. R. 281, 3 M. 127.

—unless the previous statement was made in the presence of the accused it cannot be used as evidence 23 C. 361.

—this sec. does not dispense with the examination of the witness directed by s. 286 9 M. 83, 1 W. R. Cr. 14.

In the discretion of the Presiding Judge.

—when a witness alleges that the previous statement was made under police pressure, the S. J. should, before bringing the previous statement upon the record under this sec. make some enquiry by examining the police officers. 4 C. W. N. 49, 7 C. W. N. 345, 22 A. 445, 27 C. 295.

—when the S. J. cannot properly rely on the statements made before him or before the C. M., he does not exercise proper discretion in allowing the latter statements to be treated as evidence. 7 C. W. N. 345.

If such witness is produced and examined.

—to utilise the evidence before committing M. the witnesses must be produced and examined at the trial. 16 N. I. R. 30, mere production of witnesses for cross-examination only is not sufficient.

S. 288. If such witness is produced and examined—*contd.*

9 M. 83 1915 M. W. N. 544 the witness must be examined afresh
1883 P. R. 5t 24, W. R. 11, 1 W. R. 14.

—the evidence cannot be read over to the witness in order to ask him if it is true while the witness is not examined afresh. 6 C. P. L. R. 33 nor it should be read over before the defence has had an opportunity of cross-examining the witnesses. 3 Lah. 141.

—a witness should not be allowed to be cross examined only on his previous deposition being read out. 9 M. 83.

May be treated as evidence in the case for all purposes.

—statement before the C. M., although retracted in the Sessions Court may be used as substantive evidence by the S. J., 28 A. 633. (7 A. 262, 21 A. 111, 1884 A. W. N. 336, 22 A. 445 and 51 I. R. 1837) *Ref.* 24 M. 414, *contra.*, the Judge cannot solely rely upon such evidence even if he considers that the statement made before him is false. 27 C. 295, 21 W. R. Cr. 49; 12 B. L. R. p. 15, Rat. Un. Cr. 894 966, 12 M. 123, 7 C. W. N. 345, 2 Weir 374, 375, 22 A. 445, 10 C. W. N. 243 (note).

“... is that evidence duly given in a trial court so Unless there is clearly is Magistrate evidence before the Magistrate should be preferred to and substituted for that given before the S. J., the evidence given before the M. cannot be effectively utilised in support of a conviction. 84 Ind. C. 334; 3 Pat. 781; 6 P. L. T. 53, 1925 Pat. 5; 26 Cr. L. J. 270.

—the put in and as such, any reason 90 I. C. 43 129, 27 B 1930 Pat. 338; 1930 Cr. C. 710.

—a prisoner is not entitled to refer to the deposition given before the C. M. for contradicting the witness in the S. C. without drawing attention of the witness to the alleged contradiction and without giving opportunity to explain them 31 C. 142 F. B.

—the mere fact that the witness tells a different story before the S. J. does not make him a hostile witness. 13 C. 53.

“Subject to the provisions of the Indian Evidence Act.”

—the expression “subject to the provisions of the Evidence Act” should not be put in under a section of the Evidence Act if s. 288 unnecessary and 33; 26 Cr. L. J. 1553; 1926 L. J. 594; 1926 P. H. C.

S. 288 "Subject to the provisions of the Indian Evidence Act"—contd

—the expression merely means that the law of evidence must be complied with, for instance evidence which had been wrongly admitted by the committing M. in violation of the provisions of the Evidence Act, could not be transferred to the Sessions file; 88 I C 861 26 Cr. L. J. 1245 : 1925 Lah. 452, it is simply to prevent the admission of irrelevant evidence inadvertently recorded by the committing M 88 I C. 7 : 1925 Sind 289 : 26 Cr. L. J. 1063, the intention of the legislature is to exclude or limit the use of and to accept them with more caution, 86 I. C. 145 : 1925 Bom. 266 : 27 Bom L. R. 113, 26 Cr. L. J. 705.

—the admissibility of such evidence should not be limited at the trial only to cases where the evidence is admissible under the Evidence Act viz, under ss. 145 or 155 of the Evidence Act. 94 I. C. 258 : 27 Cr. L. J. 594 : 1926 Pat. 440.

—as regards the weight to be attached to such evidence the principle is well settled that unless there is clearly present, besides the evidence given before the Magistrate, evidence which will show that the evidence given before the M. should be preferred to and substituted for that given before the Sessions Judge, the evidence given before the Magistrate cannot be effectively utilised, in support of a conviction, 3 Pat. 781, 1925 P. 51 : 84 I. C. 334 : 6 Pat. L. T. 53 : 26 Cr. L. J. 270, 94 I. C. 258 : 1926 Pat. 440 : 27 Cr. L. J. 594, 1926 P. H. C. C. 167.

—inconvenience to the witness is not one of the grounds under s. 33 of the Ev Act 6 A. 224, 21 W. R. Cr. 56, 2 A. 646.

—a counsel for the prosecution is not entitled to reply when defence puts in depositions of prosecution witness. 8 C. W. N. 526, see below.

Procedure.

—when a judge wishes to rely on s. 288 the whole of the previous statement should be filed and it would then be open to the "to examine the witness after" weighing the evidence. 1925 M. 50 : 27 Cr. L. J. 18, 7 A. 862, 114 C. 257 : 30 Cr. L. J. 333.
the witness's deposition bodily from the committing M a record. 7 A. 862, 21 A. 111.

S. 289. Procedure after examination of witness to prosecution.

Examination of the witness for the prosecution.

—all the witnesses who are alleged or known to have knowledge of the facts of the case ought to be brought before the court by the prosecution and examined. 10 C. 107, 8 C. 121 : 10 C. L. R. 151, 2 Weir 379, 11 C. W. N. 1085.

—examination of the witness who has a pre-determined intention to give false evidence may be dispensed with. 15 A. 6, 2 Weir 378, 382, 14 C. 245, 14 A. 521.

S. 289. Examination (if any) of the accused.

—examination of the accused is not imperative. 9 C. L. J. 35; 10 Cr. L. J. 325

—omission to examine the accused does not vitiate the trial 27 M. 238

—previous conviction cannot be proved by the admission of the accused 28 C. 682, nor the gaps in the evidence can be supplied by examining the accused 27 M. 238, 26 C. 49.

There is no evidence that the accused committed the offence

—there is no evidence" cannot be extended to mean no satisfactory, trustworthy or conclusive evidence. 10 A. 414, 9 C. 875, 16 W. R. Cr. 20, 16 B. 414, 12 A. 531, 8 Pat. L. T. 691; 103 I. C. 548; 1927 Pat. 370; 26 Cr. L. J. 692; 7 Pat. 15.

—a scintilla of evidence clearly will not justify the court to leaving the case to the jury, but it is not necessary that the evidence must be satisfactory, trustworthy and conclusive before the jury can be asked to arrive at their verdict on it. 103 I. C. 548; 1927 Pat. 370; 26 Cr. L. J. 692; 8 Pat. L. T. 691.

—insufficiency of evidence means that taking the evidence at its face value it does not disclose a case against the accused. 1929 Pat. 121; 10 Pat. L. T. 101; 115 I. C. 692; 30 Cr. L. J. 519.

—in the absence of any evidence the accused must be acquitted 5 M. L. T. 75; 10 Cr. L. J. 68, 16 W. R. Cr. 19, 7 W. R. Cr. 39, 10 A. 414, 2 Weir 382.

—no final opinion should be formed until the whole evidence has been considered. 20 M. 445.

—the Judge should not direct a jury to return a verdict of "not guilty" on the ground that there is no evidence worth the name against the accused. When there is evidence on the record the jury is to say that it is unreliable 88 I. C. 463; 1925 Cal. 1055; 26 Cr. L. J. 1151

Court shall call on the accused to enter on his defence.

—calling on the accused to enter on his defence is an essential part of the criminal trial. 23 C. 252.

—the record must show the nature of the defence. 15 W. R. Cr. 16.

—the court should grant time to the defence to adduce evidence 23 W. R. Cr. 58, 15 W. R. Cr. 34.

—no adverse presumption to be drawn against the accused for not adducing any witness after informing that he will. 10 C. 140, 13 C. L. J. 358.

—when the prosecution witness is examined by the defence he cannot ask the witness what he stated before the C. M. without the permission of the court or without declaring him hostile. 20 A. 155.

S. 290. Defence.

—one accused may cross-examine the witness of the co-accused when the case of the latter is adverse to that of the former. 21 C. 401.

S. 288 "Subject to the provisions of the Indian Evidence Act"—*contd.*

—the expression merely means that the law of evidence must be complied with, for instance evidence which had been wrongly admitted by the committing M. in violation of the provisions of the Evidence Act, could not be transferred to the Sessions file; 88 I C 861 26 Cr. L. J. 1245; 1925 Lah. 452, it is simply to prevent the admission of irrelevant evidence inadvertently recorded by the committing M 88 I C. 7; 1925 Sind 289; 26 Cr. L. J. 1063, the intention of the legislature is to exclude or limit the use of and to accept them with more caution, 86 I. C. 145; 1925 Bom. 266; 27 Bom L. R. 113, 26 Cr L. J. 715.

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—examination of the accused is not imperative. 9 C. L. J. 55; 10 Cr. L. J. 325.

—omission to examine the accused does not vitiate the trial 27 M. 238

—previous conviction cannot be proved by the admission of the accused, 24 C. 659, nor the gaps in the evidence can be supplied by examining the accused 27 M. 238, 26 C. 49.

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—"there is no evidence" cannot be extended to mean no satisfactory, trustworthy or conclusive evidence. 10 A. 414, 9 O. 875, 16 W. R. Cr. 20, 16 B. 414, 12 A. 551, 8 Pat. L. T. 691; 103 I. C. 548; 1927 Pat. 370; 28 Cr. L. J. 692; 7 Pat. 15.

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—the record must show the nature of the defence. 15 W. R. Cr. 16.

—the court should grant time to the defence to adduce evidence. 23 W. R. Cr. 58, 15 W. R. Cr. 34.

—no adverse presumption to be drawn against the accused for not adducing any witness after informing that he will. 10 C. 140, 13 C. L. J. 358.

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S. 290. Defence.

—one accused may cross-examine the witness of the co-accused when the case of the latter is adverse to that of the first 21 C. 401.

S. 290. Defence—contd.

—but the accused cannot cross-examine his own witness unless it appears that the witness is suppressing the truth or is lying or refusing to give information. 20 A. 155.

—if the accused are tried separately each is a competent witness in the trial of the other. 23 B. 213, 16 B. 631.

—an accused is not bound to account for his movements 10 C. 970.

—the accused being merely on the defensive owes no duty to any one. Rat. Un. Cr. 686.

—court cannot adjudge a criminal case on mere probabilities. Rat. Un. Cr. 772, 779.

—the accused is at liberty to meet the case in any way he likes. He can rely on the witnesses for the prosecution, as to the whole or any part of the case or may call fresh evidence himself. No adverse inference will be drawn if he does not produce or examine any witness. 8 C. 121, 10 C. 140, 21 O. W. N. 1152, (*per Huda J.*) but where a *prima facie* case of circumstances making out or tending to support the charge is established and the accused withholds evidence in disproof or explanation available to him and accessible to the prosecution, an unfavourable inference may legitimately be drawn. 21 O. W. N. 1152 (*per Teunon J.*)

S. 291. Right of accused as to examination and summoning of witnesses.

—adjournment should be given to the accused to secure the attendance of witness. 2 Weir 283, 18 W. R. Cr. 20, 15 W. R. Cr. 34; 6 B. L. R. Ap. 88, 12 W. R. Cr. 44, 4 Bom L. R. 939.

—but refusal to grant adjournment to summon witness not named in the list is not illegal 91 L. C. 806; 1925 Lab. 557, 27 Cr. L. J. 134; 1925 Lab. 557.

—a O. M. is bound to take steps to procure the attendance of defence witnesses named in the list before him. 15 W. R. Cr. 34, 23 W. R. Cr. 56, 2 W. R. Cr. 6, 3 W. R. Cr. 35.

—summons cannot be refused on witnesses simply on the ground of largeness of number, 11 C. 762, 23 W. R. Cr. 56, or on the ground that the application for summons has been made at a late stage, *viz.*, when the case is ready for argument. 27 C. 758.

—the S. Judge can summon witnesses not named in the list before the O. M. 8 A. 668, but the accused cannot claim that as of right. 3 W. R. Cr. 29.

—it is for the accused and not for the judge to say what amount of evidence was required to place before the jury to establish the case for the defence. 7 O. W. N. 188.

—it cannot be the duty of the public prosecutor to call or put into the witness box for cross-examination a witness, who in the former trial was called by the court and whom he believes to be false. 1922 Cal. 461; 69 I. O. 630; 23 Cr. L. J. 742.

S. 291 Right of accused as to examination and summoning of witnesses—*contd*

—this sec does not in express terms refer to a witness who has been discharged but the court may allow the accused an opportunity for the production of such witness 73 I. C. 54; 24 Cr. L. J. 518 1923 Oudh 142

S. 292 Prosecution's right of reply.**Amendments.**

The sec has been redrafted and amplified and the prosecutor's right of reply is confined to the stipulations mentioned in cls. (a) to (c)

—the right of reply does not depend upon the accused's statement, but up on his actual adducing of evidence. 11 Bom, L. R. 177, 9 Cr. L. J. 284, 30 B. 411.

—if documentary evidence is put in by the accused during the case for the prosecution and before examination of the accused, the prosecution has the right of reply. 11 M. 339, 30 B. 421; 8 Bom. L. R. 421; 4 Cr. L. J. 1, 14 A. 212, 16 A. 83, 4 L. B. R. 5; 6 Cr. L. J. 113, *Contra*, 10 C. 1024, 14 C. 245, 17 C. 930, 31 C. 1050, 30 B. 421, 10 Cr. L. J. 24

—it was never meant by the Legislature that the prosecution should have a right of reply when on witnesses are called for the defence the object of law being evidently to let each side have an opportunity of commenting
give the additional advan
C. L. R. 358, 7 L. B. R. 84
1050, 10 C. W. N. 267. note)

—tendering of documents not forming part of the record sent up by the C. M. may constitute adducing of evidence by the accused. 31 C. 1050; 8 C. W. N. 518 *Contra*. 10 C. W. N. 267 (note), 6 C. W. N. 303 (note), 8 C. W. N. 209. (note).

—s. 292 should be read as connected with sec. 289 and the right of reply arises only if the accused adduces evidence after the case for the prosecution is concluded. 20 C. W. N. 976; 17 Cr. L. J. 423, 43 C. 426.

—the test is whether the exhibits put in by defence have taken the prosecution by surprise. 10 C. W. N. 267 (note).

—when one of several accused persons tried jointly calls witnesses, but the other accused do not call witnesses, they must all follow in their defence and the prosecution has the right of reply on the whole case. 18 B. 364.

S. 293. View by jury or assessors.

—the judge cannot delegate his own function of examining the witnesses on the spot to the assessors. 5 W. R. Cr. 59.

—the place of occurrence should not be visited after the close of the case and after the opinions of the assessors have been recorded. 1 C. L. R. 143.

—there is no provision however for the Sessions Judge himself joining the inspection. 14 C. W. N. 422; 1 Cr. C. L. 171; 37 C. 340.

S. 295. Jury or assessors to attend at adjourned sitting.

—the Judge cannot discharge the jury in the midst of the trial and then adjourn the case to the next sessions. 4 Bom. L. R. 939.

—the Judge cannot examine witnesses after the jury has been discharged. 7 Bom. L. R. 978.

—but the Judge is bound to adjourn a case in which a witness summoned for the defence is absent. 23 W. R. 58, 15 W. R. 31: 18 W. R. 20

S. 297. Charge to jury.

Summing up of the charge.

—the summing up contemplated by law is a fairly full and distinct statement of the evidence with such advice as to the legal hearing of that evidence and the weight which properly attaches to the several parts of it as a sound judicial discretion would suggest. The Judge in a proper summing up must formulate and specify simple issues for consideration and collate the evidence *pro* and *con* bearing upon the issues in order to assist the jury to arrive at a correct decision thereon. Summing up the depositions of all witnesses without discrimination including what the pleaders on both sides said and huddling together important and trivial points only confuse the jury. Non-fulfilment of the above conditions constitutes serious misdirection. 87 I. C. 833; 29 C. W. N. 526; 26 Cr. L. J. 1009; 1925 Cal. 729.

—the object of summing up is to enable the Judge to place before the jury the facts and circumstances both for and against the prosecution in order to help them to arrive at a right decision. 42 C. L. J. 504; 53 C. 372; 92 I. C. 442; 1926 Cal. 139; 27 Cr. L. J. 266.

—the charge to the jury must be recorded in such a way as would enable a court of appeal to judge whether the fact and circumstances of the case have been properly placed before the jury and whether the law has been correctly explained. 42 C. L. J. 504; 53 C. 372; 92 I. C. 442; 1926 Cal. 139; 27 Cr. L. J. 266.

—the Judge should reduce the charge to writing as soon as possible after charging the jury if he does not write it before delivery. 1930 All. 28; 30 Cr. L. J. 1146; 1930 Cr. C. 44; 120 I. C. 114; 1930 A. L. J. 486.

—the charge to the jury must be so as to enable the jury to grasp the points for their decision and should set out the case against each of the accused separately. 1004 Pet. 326; 103 I. C. 81; 5; 1926 Cal. 494.

—the statement of facts in details chronologically the prosecution without the jury in any way he fails to give the difference of using th

S. 297. Summing up of the charge—*contd.*

word "possible" and "likely" shown. 10 C. L. J. 47; 34 C. W. N. 223; 123 I. C. 751; 1930 Cr. C 136; 1930 Cal 136; 31 Cr. L. J. 572.

—the Judge is to place before the jury the entire evidence for or against the accused and leave the ultimate decision of the questions of fact to it. He is not debarred from expressing his own opinion upon the evidence put in such a way as not to create any impression in the mind of the jury that it was a direction from the Judge which they should follow. 34 C. 634, 26 C. W. N. 990 *Relon*. Any advice from the Judge to ignore or neglect any evidence is improper. The jury should not be asked to decide questions of fact without considering the whole of the evidence. 6 Bom. L. R. 31 *Relon*. When there are no eye-witnesses nor sufficient evidence of motive it is proper to leave the whole case to the jury. 43 C. L. J. 483; 96 I. C. 930; 1926 Cal 996; 27 Cr. L. J. 1035.

—where a 297 was only technically complied with as regards the heads of charge but it was not sufficient to enable the appellate court to be satisfied that it was delivered fully as regards the evidence and the points of law and salient points were not also placed before the jury. It was a misdirection vitiating the trial. 33 C. W. N. 84; 118 I. C. 351; 30 Cr. L. J. 912; 1929 Cal 170.

—although the law requires that the heads of a charge to the jury should be recorded yet as the law allows an appeal on the ground of misdirection the charge must be in such form as to enable the Appellate Court to be satisfied that it was delivered with sufficient fulness to the jury and that all points of law and fact were clearly and correctly explained to the jury having regard to the evidence adduced in the case. 31 C. W. N. 387; 101 I. C. 606; 1927 Cal 936; 24 Cr. L. J. 478; 34 C. 698; 11 C. W. N. 666 *Ref.* 26 C. W. N. 996; 35 C. L. J. 437.

—the Judge should not only record the heads of charge but should point out sufficient materials showing that he has correctly explained the law to the jury. Absence of that would be sufficient to render retrial necessary. 100 I. C. 358; 1927 Cal. 460; 28 Cr. L. J. 278.

—the Judge is to record the heads of the charge to the jury.
 14, 326, 147, 148, 149, and
 record of the charges on
 the judge to record the
 involve the setting aside
 of the conviction. 1928 Pat. 420; 7 Pat. 361; 111 I. C. 308; 29 Cr. L. J. 801; 10 Pat. L. T. 26.

—the jury should be properly directed that it is their duty to weigh all the circumstances of the case, consider the accused's explanation and then decide whether or not they should make such a presumption. 52 C. 223; I. C. 515; 1925 Cal 666; 26 Cr. L. J. 1155.

—to avoid misdirection or non-direction it is the duty of the Judge to give the jury substantial help and guidance by properly

S. 297. Summing up of the charge—contd.

sifting and weighing the evidence and marshalling the facts under distinct and separate heads. 1929 Cal. 742 : 1929 Cr. C. 390.

—the Judge is to place before the jury the salient points arising on the evidence adduced before the jury and it is not his duty to make a second speech on behalf of the defence and it is also not his duty to incorporate in the charge the evidence of witnesses who had already given their depositions before the jury. 33 C. W. N. 918 : 1929 Cal. 765 : 1929 Cr. C. 477 : 57 C. 248.

—it is the Judge's duty to hold the balance even between the prosecution and the defence and to put before the jury the weak as well as the strong points in the case. 1929 M. W. N. 946.

—in the general observations which a Judge makes in the course of his charge to the jury he should be accurate and within the limits of what has been allowed from time to time in criminal trials. 48 C. L. J. 473 : 33 C. W. N. 55 : 117 I. C. 684 : 30 Cr. L. J. 825 : 1928 Cal. 769.

—the Judge should sum up the evidence, otherwise new trial will be ordered on the ground of misdirection. 9 W. R. Cr. 51, 25 C. 561, 23 C. 252, 30 C. 822, 4 C. W. N. 193, 5 B. H. C. R. Cr. 85

—but it is not necessary for him to go into the minutest details in the evidence 40 C. 367.

—the judge should not use expression assuming the guilt of the accused nor should he use slang and colloquial phrases and the interrogative method in charging the jury 45 C. 557.

—it is only after the whole prosecution and defence case is concluded that the court should proceed to charge the jury. 4 Leb. 382 : 1924 Lah 17.

—pleader's argument at length does not exonerate the Judge from his duty of summing up, 27 B. 644 and to lay down the law. 29 C. 379 : 6 C. W. N. 292.

—a charge to the jury which neither sums up evidence for the prosecution nor lays down the law but merely states that the law on the subject had already been presented by the Public prosecutor and that there was no difficult point of law, is defective. 88 I. C. 178 : 1926 Nag 53 : 26 Cr. L. J. 1090.

—a charge cannot be said to be bad unless it is really insufficient. 56 C. 840 : 1929 Cal. 182 : 116 I. C. 167 : 49 C. L. J. 197.

—merely stating in the charge that particular sections have been read and explained to the Jury without showing the manner in which they were explained, is illegal. 88 I. C. 473 : 1925 Cal. 1155 : 26 Cr. L. J. 1155.

—the Judge may formulate at the conclusion of the delivery of his charge specific questions for the jury's reply. In complicated cases such practice is helpful to the jury. 91 I. C. 225 : 1925 Pat. 79 : 27 Cr. L. J. 49.

—the Judge ought to point out to the jury the legal effect and bearing of a document or a portion of it relied on by either side. 3 W. R. Cr. 69.

S 297 Summing up of the charge—contd.

—principal points in the evidence should be stated to the jury. 6 W. R. Cr. 72; Rat. T'n Cr. 859.

—where the charge to the jury consisted only of these words "it is for you to say from the evidence you have heard whether you consider the accused guilty or not" the charge was wholly insufficient. 1902 A. W. N. 201.

—there should be but one charge to the jury both on the facts and on the points of law. 2 Weir 493.

—the Judge may ask the jury to reconsider the point of a case where it has not been considered by them. 105 I. C. 662; 1927 All. 721; 28 Cr. L. J. 950; 50 A. 365; 25 A. L. J. 1077.

—but where the jury at first brought in an unanimous verdict of guilty and the Judge being of contrary opinion proceeded to charge the jury again with the result that the jury altered their verdict into one of not guilty, the procedure was held to be illegal and retrial was ordered. 32 C. W. N. 144; 1928 Cal. 228; 107 I. C. 90; 29 Cr. L. J. 228.

—the Judge should warn the jury about the case of each accused separately. 18 M. L. J. 250; 3 M. L. T. 263; 7 Cr. L. J. 358.

—it is inconvenient to have the charge delivered through interpreters, *abote case*.

—but when the Judge is not sufficiently acquainted with the language of the jurymen he may delegate the delivering of the charge to a person like the Govt. pleader asking him to translate the charge he has put down in writing. 105 I. C. 662; 1927 All. 721; 28 Cr. L. J. 950; 50 A. 365; 25 A. L. J. 1077.

—s. 297 specially enacts that the Judge shall only charge the jury when the case for the defence and the prosecution's reply are concluded. 36 M. 585; 15 Cr. L. J. 197; 22 Ind. C. 981.

—in addressing the jury the Judge should endeavour to speak in a manner simple and direct. The charge must not be involved, nor the language should be extravagant. 11 Cr. L. J. 538 (c).

—in order to help the jury to arrive at a proper verdict the Judge should use the plainest and simplest language in the charge. 1930 Cal. 430; 1930 Cr. C. 657.

—it is the duty of the Judge to warn the jury that the statement of an accused, not amounting to a confession cannot be considered against the co-accused. 50 C. 318; 1923 Cal. 517.

—when there are two trials, the first being a preliminary, it is proper for the Judge to warn the jury that they are to consider the evidence in the first trial only, and that the other is preliminary. 1929 M. W. N. 577.

—where the Judge omitted to mention to the jury that the evidence of the Police proving the confession of the accused was inadmissible there was misdirection in summing up. 1923 P. 103.

—in his summing up the Judge should point out to the jury that a considerable time had elapsed between the recovery of the stolen property from the person who had been put in possession of them by the accused and theft. 1929 M. W. N. 577.

S. 297. Summing up of the charge—contd.

—in a criminal trial the Counsel for the prosecution in opening the case to the jury should only state all that it is proposed or intended to prove in the case so that the jury can see if there is any discrepancy between the opening statements of counsel and the evidence afterwards adduced in support of them. Where the counsel for the prosecution referred to certain fact which had no bearing
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 C L J. N. 1121: 50
 1929 Cal 617 F B. L. J. 993:

Misdirection as to fact.

—where the S J did not clearly explain that the onus was on the prosecution and did not set out all the points for decision and omitted to give proper direction on the fact of the case there was misdirection 26 C W. N 972.

—the Judge may express his opinion but he should always be careful to add that it is for the jury to form their own opinion on the evidence and that they are the sole judges of fact. 10 C. 970, 4 C. W. N. 196, 576, 25 C. 230, 35 C. 531, 14 A. 25, 25 B. 316, 10 B L. R. Ap-36, 12 W. R. Cr. 80.

—expressions of opinion by the judge without telling the jury that they were the sole judges of fact was misdirection. 34 C. 698, 35 C. 531: 12 C W. N. 774.

—but at the same time a charge which avoids any expression of opinion is a colourless and unhelpful direction. 1929 Cr. C. 390: 1929 Cal. 742.

—when a nondirection is such that there are grounds for thinking that the jury by reason of it may have been put on a wrong track and made to arrive at a wrong conclusion it amounts to a misdirection. 1928 Pat. 120: 6 Pat. 817: 106 I. C. 673: 29 Cr. L. J. 81: 9 Pat. L. T. 191.

—when the effect of the charge to the jury was to withdraw from the jury the determination of facts which it was the exclusive province of the jury to decide and the result might have been that the evidence was not carefully considered by the jury and the Judge merely read out the evidence without analysing them, the charge was held to be bad and retrial was ordered. 31 C. W. N. 881: 46 C. L. J. 31: 1927 Cal. 611: 28 Cr. L. J. 742: 103 I. C. 790.

—where the jury is told that co-accused was on a previous occasion convicted on the same facts they must be warned not to take it into consideration when deciding of the guilt of the accused. 93 I. C. 46: 1926 Cal. 728: 27 Cr. L. J. 398.

—use of expressions assuming the guilt of the accused and of slang and colloquial phrases and of the interrogative method in charging the jury was condemned. 22 C. W. N. 213

—the jury are responsible for their verdict and are the sole judges of facts but the judge's charge is not only for the purpose of

S. 297. Misdirection as to evidence—*contd.*

—in a case dependent upon circumstantial evidence the incriminating fact must be incompatible with the innocence of the accused and incapable of explanation upon any reasonable hypothesis than that of his guilt. Where the Judge depending not on the probative value of the circumstantial evidence but on the weighing of direct testimony of witnesses while charging the jury stated "it should be established by the prosecutor beyond reasonable doubt that the circumstances are not merely inconsistent with the guilt of the accused but entirely inconsistent with his innocence" without explaining to the jurors in the light of the above principle, there was misdirection. 1930 Cal. 370 : 1930 Cr. C. 634, 17 C. W. N. 379 *Expl* 8 C. W. N. 278 *Rel on*.

—a verdict obtained from the jury without placing before them an important piece of evidence favourable to the accused, whatever may have been its real worth, cannot be sustained. 42 C. L. J. 504 : 53 C. 372 : 92 I. C. 402 : 1926 Cal. 139 : 27 Cr. L. J. 266.

—it is misdirection to say that the jury may neglect any portion of the evidence. 6 Bom. L. R. 31.

—to direct the jury to rely on inadmissible evidence is serious misdirection. 31 M. 127, 27 B. 626, 18 M. L. J. 250 : 3 M. L. T. 263 : 7 Cr. L. J. 358.

—where evidence of bad character and of previous conviction has been admitted in contravention of sec. 54 Evl Act the Judge should warn the jury to exclude such evidence and not to be influenced by them. Failure on the part of the Judge to do that would be a good ground for retrial. 48 C. L. J. 481 : 30 Cr. L. J. 57 : 113 I. C. 73.

—it is misdirection to merely tell the jury that there are material discrepancies without telling what those discrepancies are. 1926 All. 752 : 49 A. 209 : 99 I. C. 47 : 28 Cr. L. J. 15.

—where the accused pleaded *alibi* the S. J. ought to have told the jury that before they could convict the accused they must find that the accused were present at the occurrence. 12 C. W. N. 774 : 35 C. 531.

—a common object may change in the course of an occurrence. A crowd may have a common object at one time and may have another common object as things develop and it may well be that there are various common objects in the course of an occurrence and these should be placed before the jury because the jury is to decide if any of them has been proved against the accused and if so which of them. 83 I. C. 346 : 1925 Cal. 494.

—it is not likely to prejudice the accused to describe the common object of an unlawful assembly as "disturbing public peace, resisting, obstructing and overawing the police by criminal force and of assaulting police" 83 I. C. 346 : 1925 Cal. 494 : 25 Cr. L. J. 1386.

—where a S. J. places before the jury materials which are not on the record or which are not evidence except for purposes of corroboration or contradiction, there is a misdirection which necessitates a retrial. 67 I. C. 502 : 23 Cr. L. J. 406.

S. 297. Misdirection as to evidence—*contd.*

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S. 297. Misdirection as to Law.—*contd.*

190 I. C. 358 : 1927 Cal. 460 : 28 Cr. L. J. 278, but the mere knowledge that bribe was to be given does not make a person a participator in the giving of bribe, so he cannot be considered as an accomplice. 53 B. 479 : 1929 Bom. 296. 1929 Cr. C. 114 : 31 Bom. L. R. 545,

—the judge should not discuss points of law raised by prisoner's counsel and dispose of them. He should avoid all extraneous and unnecessary discussion and argument and should confine himself to a mere summing up of evidence on both sides, showing how the law applies to it. 8 W. R. Cr. 87, 19 W. R. Cr. 71.

—it is not necessary for a S. J. to impeach every thing that has been said by the defence pleader ; but he should draw the attention of the jury to the more essential items and the strongest argument that has been advanced for the defence ; mere reference to that is insufficient. 34 C. L. J. 512.

—it is misdirection to refer the jury to the result of a previous case against some other persons tried for the same offence except to warn them not to be influenced thereby. 9 C. L. J. 380 : 10 Cr. L. J. 438.

—charge to the jury must be considered as a whole in deciding whether there has been misdirection. 26 C. 680.

—misdirection on points of law and improper direction on points of fact. 26 C. W. N. 1002.

—President and members of the *Salis* are persons in authority and if they told the accused that if she confessed they would compromise the matter, the confession was inadmissible and the failure of the judge to mention that in charge is misdirection. 20 C. W. N. 512.

—omission to direct jury to give benefit of doubt is misdirection. 34 C. 698 : *Contra* 1925 Nag. 154 : 92 I. C. 169 : 27 Cr. L. J. 217.

—the judge must expound to the jury the right of private defence of both the person and property and should direct the jury to consider whether the accused had not used more force than was reasonably necessary for preventing the thief from running away with the stolen property. 28 C. W. N. 585 : 83 I. C. 528.

—where the defence counsel set up a plea of private defence not on the basis of the statement of the accused but on the basis of prosecution evidence but the Judge did not put that plea before the jury on the ground of it not being raised by the accused, the trial was vitiated for misdirection. 51 O. L. J. 339 : 1930 Cal. 442.

—where the Judge told the jury that the essence of the law of private defence was that the person exercising it must have reasonable fear either for his own safety or the safety of his property the exposition was not exhaustive as under s. 97 I. P. C. the right extended to the defence of the body or property of any other person as well. 1928 Cal. 269.

—where there was no proper summing up and the direction as to the right of private defence was also objectionable and the accused was also prejudiced thereby, the conviction should be set aside. 1928 Cal. 269.

S. 297 Misdirection as to Law —contd

—on a charge under a 326 I P C the omission to refer to the provisions of a 101 I P C is a misdirection 50 C. 318; 1923 Cal. 317

—omission to explain law relating to the right of private defence in the charge of offence of causing grievous hurt amounts to misdirection 53 C. 289, 1927 Cal. 237; 100 I. C. 333; 25 Cr. L. J. 273

—where the accused were charged under ss 366, 429 and 147 and the judge directed in its charge to the jury that mere dragging by hair and removal by force would amount to offences under ss. 341 and 357 the latter offences being involved in offences under ss 366 and 429 there was no misdirection 53 C. 522; 41 C. L. J. 239; 1926 Cal. 1039

—where the accused was charged of kidnapping under a 366 I P C but the judge without framing a fresh charge left it to the jury to convict him of abduction referring to matters not on the record, thus prejudicing the accused, it was misdirection vitiating the trial. 31 C W. N. 171; 45 C. L. J. 384; 1927 Cal. 200; 25 Cr. L. J. 201

—where the charge was one of kidnapping only but the Judge directed the jury also to the offence of abduction with intent to illicit intercourse, the two offences being distinct and the accused being prejudiced thereby, the conviction could not stand. 32 C. W. N. 1254; 117 I. C. 862; 30 Cr. L. J. 857.

—in case of joint trial failure of the Judge to direct the attention of the jury to the multifariousness of the charges does not vitiate the case when it is found that the jury were not misled thereby. 53 B. 479; 1929 Bom. 296; 31 Bom. L. R. 545; 1929 Cr. C. 114

—where in a case of cheating the Judge omitted to refer to loss caused owing to the conduct of the accused the trial was vitiated. 1930 M. W. N. 249 F. B.

Effect of misdirection.

—though there is misdirection, that does not justify a reversal of the verdict if the misdirection, in fact occasions no prejudice 58.

—on a trial by jury in the mufassil construction of that part of the Procedure Code where such trial is provided for, the proceedings are good in the absence of any distinct ruling to the contrary and ought not to be examined by the light of English rules or procedure. 14 W. R. Cr. 59.

—the H. C. will set aside the verdict of jury only in such cases where by a misdirection to the jury the accused has been materially prejudiced or where there has been a failure of justice: 19 W. R. Cr. 71, 26 M. J. 11 C. 85.

—where verdict is vitiated owing to misdirection the High Court has no option but to set aside the verdict and order a new trial. 21 C. 955, 25 C. 230 dissented from in 25 C. 711, 21 C. W. N.

S. 297. Effect of misdirection.—*contd.*

19 B. 749, 26 M. 1, where it has been held that the H. C. can deal with the matter in any of the ways contemplated by sec. 233 (b) see also 40 C. 822, 29 C. 782, 4 C. W. N. 576.

—where accused is to be retried for misdirection he must be placed before the jury upon all the charges which were framed against him and the H. C. has no jurisdiction to uphold the conviction under one sec. and to order retrial under another. 16 C. W. N. 909.

—the charge to the jury must be taken as a whole, and it must be seen whether its tendency has been upon the whole to give a correct or incorrect direction to the mind of the jury. 12 W. R. Cr. 80, 4 C. W. N. 196, 2 C. W. N. 702.

—mere non-direction is not necessarily misdirection. 19 C. W. N. 653, non-direction on a material point by a judge in his charge, is misdirection 40 B. 220, 20 C. W. N. 201.

—miscarriage of justice through misconsideration means that there must be a reasonable ground for apprehending that the misdirection may have affected the jury's verdict. 1930 All. 28 : 1930 A. L. J. 486 : 30 Cr. L. J. 1146 : 120 I. O. 114, 1926 All. 429 *Rel. on.*

S. 298. Duty of Judge.

Clause (a) To decide all questions of law, relevancy of facts, admissibility of evidence, etc.

Question of law.

—under the procedure law it is the duty of the judge to explain to the jury the law applicable to the case and it is the duty of the jury to accept the law as laid down by the judge without any other help. In case jury cannot understand the law the judge may explain it afresh but cannot place before the jury the Code or any legal treatise. 30 C. W. N. 693 : 43 C. L. J. 537 : 1926 Cal. 895 : 27 Cr. L. J. 926.

—the judge is to explain the law to the jury and should not hand over to them a copy of the Penal Code leaving them to decide under what sec. the offence falls or refer them to the addresses by the pleaders on either side. 14 C. 164, 29 C. 379, 27 B. 644, 6 Bom. L. R. 259, 16 C. W. N. 40.

—"laying down the law" in a. 297 does not mean laying down the whole law on the subject irrespective of the facts of the particular case. It is the duty of the judge to draw attention of the jury to what appears to be a possible answer to the charge notwithstanding that it may have escaped the counsel for the accused. 19 C. W. N. 653, 18 Cr. L. J. 385.

—what the judge says to the jury upon a point of law is a binding direction upon them. 20 W. R. 41.

—In a charge under s. 376 I. P. C. the question that when the complainant had consented to the act whether the offence within s. 375 I. P. C. had been committed is a question of law to be decided by the judge. 19 B. 735.

—whether a communication is privileged or not is a question of law to be decided by the judge. 10 W. R. 14.

—the question as to what does or does not amount to corroborative evidence is a question of law to be decided by the judge;—effect of judge's mistake 32 C. W. N. 943; 56 C. 130; 115 I. C. 238; 1929 Cal. 57; 50 Cr. L. J. 435.

—where the judge in his summing up to the jury referred to approver's evidence which was not really corroborative but subsequently corrected himself, the misdirection not being very serious the trial was not vitiated *above case*.

See other cases under s. 297.

Question as to relevancy of fact.

—although the jury are the sole judges of facts, still it is the duty of the judge to help the jury to find facts. He has to advise the jury as to the logical bearing of the evidence admitted upon the matters to be found by them 23 C. W. N. 833.

—the jury is to decide which view of the facts is true. Rat. Un. Cr. 748; 21 W. R. Cr. 72.

—the jury is to decide the question of identity of the thumb impression 1 C. L. J. 385; 2 Cr. L. J. 311.

—the judge may ask the jury to consider as an alternative case an intermediate state of facts. 6 Pat. 592; 109 I. C. 898; 1928 Pat. 139; 29 Cr. L. J. 626.

—the judge may in explaining the right of private defence refer to the motives actuating the parties. 6 Pat. 592; 109 I. C. 898; 1928 Pat. 139; 29 Cr. L. J. 626.

Admissibility of evidence.

—under s. 298 (1) (a) it is the duty of the judge to decide on the admissibility of the evidence and this duty he has to discharge irrespective of the question whether objection has or has not been taken 85 I. C. 830; 26 Cr. L. J. 606; 1923 Cal. 887; 52 C. 67; 29 C. W. N. 300; 86 I. C. 414; 1925 Cal. 567; 26 Cr. L. J. 782.

—it is the duty of the judge to decide whether evidence which is inadmissible to go into, to the prejudice of the accused, is taken. 25 C. 736; 2 C. W. N. 300; 1913, 13 Cr. L. J. 316.

—but where a document not *per se* admissible in evidence admitted by the Court and the accused having sufficient opportunity at the trial omits to take any objection he cannot afterwards

S. 297. Effect of misdirection.—contd.

19 B. 749, 26 M. 1, where it has been held that the H. C. can deal with the matter in any of the ways contemplated by sec. 233 (b) see also 10 C. 822, 29 C. 782, 4 C. W. N. 576.

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—the charge to the jury must be taken as a whole, and it must be seen whether its tendency has been upon the whole to give a correct or incorrect direction to the mind of the jury. 12 W. R. Cr. 80, 4 C. W. N. 196, 2 C. W. N. 702

—mere non-direction is not necessarily misdirection. 19 C. W. N. 653, non-direction on a material point by a judge in his charge, is misdirection 40 B. 220, 20 C. W. N. 201.

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S. 298. Duty of Judge.

Clause (a) To decide all questions of law, relevancy of facts, admissibility of evidence, etc.

Question of law

—under the procedure law it is the duty of the judge to explain to the jury the law applicable to the case and it is the duty of the jury to accept the law as laid down by the judge without any other help. In case jury cannot understand the law the judge may explain it afresh but cannot place before the jury the Code or any legal treatise. 30 C. W. N. 693 : 43 C. L. J. 537 : 1926 Cal. 895 : 27 Cr. L. J. 926.

—the judge is to explain the law to the jury and should not hand over to them a copy of the Penal Code leaving them to decide under what sec. the offence falls or refer them to the addresses by the pleaders on either side. 14 C. 164, 29 C. 379, 27 B. 644, 6 Bom. L. R. 258, 16 C. W. N. 40.

—"laying down the law" in s. 297 does not mean laying down the whole law on the subject irrespective of the facts of the particular case. It is the duty of the judge to draw attention of the jury to what appears to be a possible answer to the charge notwithstanding that it may have escaped the counsel for the accused. 19 C. W. N. 653, 18 Cr. L. J. 385

—what the judge says to the jury upon a point of law is a binding direction upon them. 20 W. R. 41.

—the question that when the fact whether the offence within question of law to be decided

—whether a communication is privileged or not is a question of law to be decided by the judge. 10 W. R. 14.

S. 298 Clause (a) To decide all questions of Law, relevancy of facts, admissibility of evidence etc.—*contd*

—the judge may in explaining the right of private defence refer to motives actuating the parties. 6 Pat 572.

—where the judge explained “reasonable doubt” to mean ignorance to the prosecution evidence it was not misdirection. 31 C. W. N. 410 : 101 I. C. 661 : 1927 Cal. 394 : 24 Cr. L. J. 485.

—the law does not require a judge to formulate specific questions for the jurors reply, though such practice is helpful in deciding the legal effect of judge’s finding. 4 Pat. 626 : 1925 Pat. 797

—the question as to what does or does not amount to corroborative evidence is a question of law to be decided by the judge;—effect of judge’s mistake 32 C. W. N. 945 : 56 C. 150 : 115 I. C. 258 : 1929 Cal. 57 : 30 Cr. L. J. 435.

—where the judge in his summing up to the jury referred to approver’s evidence which was not really corroborative but subsequently corrected himself, the misdirection not being very serious the trial was not vitiated. *above case*.

See other cases under s. 297.

Question as to relevancy of fact.

—although the jury are the sole judges of facts, still it is the duty of the judge to advise the jury as to the facts admitted upon the

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—the judge may ask the jury to consider as an alternative case an intermediate state of facts. 6 Pat. 592 : 109 I. C. 898 : 1928 Pat. 139 : 29 Cr. L. J. 626.

—the judge may in explaining the right of private defence refer to the motives actuating the parties. 6 Pat. 592 : 109 I. C. 898 : 1928 Pat. 139 : 29 Cr. L. J. 626.

Admissibility of evidence.

—under s. 298 (1) (a) it is the duty of the judge to decide on the admissibility of the evidence and this duty he has to discharge irrespective of the question whether objection has or has not been taken. 85 I. C. 830 : 26 Cr. L. J. 606, 1925 Cal. 887, 52 C. 67 : 29 C. W. N. 300 : 86 I. C. 414 : 1925 Cal. 587 : 26 Cr. L. J. 782

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J. 316 : 19 Ind. C. 1044. *Ref.*

—but where a document not *per se* admissible in evidence is admitted by the Court and the accused having sufficient opportunity at the trial omits to take any objection he cannot afterwards in

S. 297. Effect of misdirection.—*confd.*

19 B 749, 26 M. 1, where it has been held that the H. C. can deal with the matter in any of the ways contemplated by sec. 233 (b) see also 10 C. 822, 29 C. 782, 4 C. W. N. 576.

—where accused is to be retried for misdirection he must be placed before the jury upon all the charges which were framed against him and the H. C. has no jurisdiction to uphold the conviction under one sec. and to order retrial under another. 16 C. W. N. 909.

—the charge to the jury must be taken as a whole, and it must be seen whether its tendency has been upon the whole to give a correct or incorrect direction to the mind of the jury. 12 W. R. Cr. 80, 4 C. W. N. 196, 2 C. W. N. 702

—mere non-direction is not necessarily misdirection. 19 C. W. N. 653, non-direction on a material point by a judge in his charge, is misdirection 40 B 220, 20 C. W. N. 201.

—miscarriage of justice through misconsideration means that there must be a reasonable ground for apprehending that the misdirection may have effected the jury's verdict. 1930 All. 28 : 1930 A. L. J. 486 : 30 Cr. L. J. 1146 : 120 I. C. 114, 1926 All. 429 *Rel. on.*

S. 298. Duty of Judge.

Clause (a) To decide all questions of law, relevancy of facts, admissibility of evidence, etc.

Question of law

—under the procedure law it is the duty of the judge to explain to the jury the law applicable to the case and it is the duty of the jury to accept the law as laid down by the judge without any other help. In case jury cannot understand the law the judge may explain it afresh but cannot place before the jury the Code or any legal treatise. 30 C. W. N. 693 : 43 C. L. J. 537 : 1926 Cal. 695 : 27 Cr. L. J. 926.

—the judge is to explain the law to the jury and should not hand over to them a copy of the Penal Code leaving them to decide under what sec. the offence falls or refer them to the addresses by the pleaders on either side. 14 C. 164, 29 C. 379, 27 B. 644, 6 Bom. L. R. 258, 16 C. W. N. 40.

—"laying down the law" in s. 297 does not mean laying down the whole law on the subject irrespective of the facts of the particular case. . . . attention of the jury to charge notwithstanding accused, 19 C. W. N.

—what the judge says to the jury upon a point of law is a binding direction upon them. 20 W. R. 41.

—in a charge under s. 376 I. P. C. the question that when the complainant had consented to the act whether the offence within s. 376 I. P. C. had been committed is a question of law to be decided by the judge. 19 B 735.

—whether a communication is privileged or not is a question of law to be decided by the judge. 10 W. R. 14.

S. 200 Clause (a) To decide all questions of Law, relevancy of facts, admissibility of evidence etc.—contd.

—the judge may in explaining the right of private defence refer to motives actuating the parties. 6 Pat. 572.

—where the judge explained "reasonable doubt" to mean lacuna in the prosecution evidence it was not misdirection. 31 C. W. N. 410; 101 I. C. 601; 1927 Cal. 398; 25 Cr. L. J. 485.

—the law does not require a judge to formulate specific questions for the jurors reply, though such practice is helpful in deciding the legal effect of judge's finding. 4 Pat. 626; 1925 Pat. 797.

—the question as to what does or does not amount to corroborative evidence is a question of law to be decided by the judge;—effect of judge's mistake. 32 C. W. N. 945; 56 C. 150; 115 I. C. 258; 1929 Cal. 57; 30 Cr. L. J. 435.

—where the judge in his summing up to the jury referred to approver's evidence which was not really corroborative but subsequently corrected himself, the misdirection not being very serious the trial was not vitiated. *above case*.

See other cases under s. 297.

Question as to relevancy of fact.

—although the jury are the sole judges of facts, still it is the duty of the judge to help the jury to find facts. He has to advise the jury as to the logical bearing of the evidence admitted upon the matters to be found by them. 23 C. W. N. 833.

—the jury is to decide which view of the facts is true. Rat. Un Cr. 748, 21 W. R. Cr. 72.

—the jury is to decide the question of identity of the thumb impression. 1 C. L. J. 385; 2 Cr. L. J. 311.

—the judge may ask the jury to consider as an alternative case an intermediate state of facts. 6 Pat. 592; 109 I. C. 898; 1928 Pat. 139; 29 Cr. L. J. 626.

—the judge may in explaining the right of private defence refer to the motives actuating the parties. 6 Pat. 592; 109 I. C. 898; 1928 Pat. 139; 29 Cr. L. J. 626.

Admissibility of evidence.

—under s. 293 (1) (a) it is the duty of the judge to decide on the admissibility of the evidence and this duty he has to discharge

S. 200. To find, O. 10. 17. 187.

—but where a document not *per se* admissible in evidence is admitted by the Court and the accused having sufficient opportunity at the trial omits to take any objection he cannot afterwards

S. 298. Clause (a) To decide all questions of Law, relevancy of facts, admissibility of evidence etc.—*contd.*

appeal impeach the verdict of the jury on the ground that the document had been admitted without formal proof. 19 Cr. L. J. 886 (Pat).

—the Judge should tell the jury to reject the evidence of hostile witness altogether, omission to do so amounts to misdirection. The evidence of such witness should not be partly relied upon and partly rejected. 34 C. W. N. 526 : 51 C. L. J. 203 : 1930 Cr. C. 356 : 1930 Cr. C. 276, 1923 Cal. 463 *Ref.*

—the credibility of the evidence must be left to the jury to be considered. 7 C. L. J. 246, 45 C. 557, 25 C. 736.

—the Judge is to put everything in favour of the accused before the jury but he need not assume the part of the defence counsel. But where the Judge referred to the circumstances rendering a deposition unreliable but all the same the jury chose to believe the witness, there was no misdirection. 32 C. W. N. 616, 1925 Cal. 500 : 109 I. C. 225 : 29 Cr. L. J. 497.

—the Judge cannot say in a general manner that there is nothing in the evidence to support or even to lend a semblance of support to the contentions of the accused. 25 C. W. N. 682.

—the judge is to decide whether confessions made by the accused were voluntarily made or not. 11 Bom. L. R. 332 and to mention to the jury that the confession made by the accused to the police-officer is inadmissible. 3 Pat. L. T. 101.

—where the public prosecutor read an alleged confession of the accused which was inadmissible in evidence as not being recorded according to law the irregularity vitiates the trial. 3 P. L. T. 52.

—where the Judge referred the jury to a self exculpatory statement of an accused sought to be utilised to prove the guilt of his co-accused and at the same time directed to scrutinize such evidence and accept it for its worth, held that such statement being inadmissible under s. 30 Evi. Act, there was a misdirection. 47 C. L. J. 526. 32 C. W. N. 731 : 109 I. C. 351 : 1928 Cal. 416 : 29 Cr. L. J. 527.

—an elementary principle of sifting evidence is to test it in light of probabilities. 11 C. W. N. 1085.

—the method of the S. J. in dealing with the testimony of the witnesses by dividing them into two classes Hindus and Mahomedans and accepting the evidence of one class and rejecting that of the other was open to serious criticism. 11 C. W. N. 1085.

—the piecemeal examination of the testimony of individual witness without a broad view of the facts, circumstances and probabilities of a case generally leads to a failure of justice, especially in a case where most of the witnesses are drawn from a class of persons whose testimony is frequently unconvincing and not frequently unreliable. *above case.*

—the S. J. cannot convict one of two persons, when it is uncertain who fired the fatal shot, in the absence of common intention. *above case.*

S. 298 Clause (a). To decide all questions of law, relevancy of facts, admissibility of evidence etc — *omitted*.

—where a case depends on expert evidence, the judge should call the attention of the jury to the fact that the evidence of an expert should be approached with considerable care and caution.
1 C. L. J. 385; 1 C. L. J. 311

—the jury may decline to rely on the evidence of an expert witness. 9 C W N 320

—where the prosecution cross-examines the only witness that it has summoned the Judge should direct the jury that there is no evidence and they should return the verdict of not guilty and omission to do that amounts to: misdirection vitiating the trial because the effect of the cross-examination of own witness is to discredit the witness altogether and not merely to get rid of the part of his testimony. 32 C. W. N. 872 1925 Col. 690; 56 C. 145; 114 I. Q. 793

—the knowledge that bribe was to be given does not make a person participant in the giving of bribe, hence the direction to the jury to consider such a person's evidence is not tainted by reason of being that of an accomplice. 53 B. 479; 1929 Bom. 296; 1929 Cr. C. 114; 31 Bom. L. R. 543.

Clause (b). To decide upon the constructions of documents.

—the judge must explain to the jury the legal construction to be put upon a document and the legal effect and bearing thereof.

—the judge has every right to draw the attention of the jury to a palpable blot or alteration on the face of a document. 17 W. R. 58

—though to practice it is not desirable to refer to and read from the Law Reports as it may have the effect of confusing the line between murder and manslaughter. Judges do often read from the Law Reports and so judgment. 99 I. O.

Clause (c), To decide upon all matters of fact oneblig the giving of evidence.

—the judge is to decide upon all facts necessary to be proved in order to enable evidence of particular matters to be given. Ratanial 245. 452.

Clause (d), To decide whether the question is for the judge himself or for the jury to decide.

—the judge must point out to the jury the case for the accused. 30 C. 822, 4 C. W. N. 196, 7 C. 42, 11 C. 10.

—the judge should not put the probabilities in favour of the prosecution too strongly before the jury but they must be asked to find for themselves. 85 I. C. 711; 26 Cr. L. J. 567; 1926 Cal. 439.

—it is not right for a judge to take away entirely from the jury the consideration of the question as to whether the confessions were voluntary or not. 85 I. C. 830; 26 Cr. L. J. 606.

S. 298. Clause (d). To decide whether a question is for the judge himself or for the jury to decide.—contd.

—the omission to tell the jury that the accused is entitled to the benefit of any reasonable doubt is not a misdirection vitiating the trial. 7 N. L. J. 203.

—where the charge to the jury omits to make any reference to the right of private defence under s. 103 I. P. C. set up by the accused the charge is bad in law and vitiates the trial. 39 C. L. J. 525; 1924 Cal. 776.

—when the complainant is a consenting party it is for the judge and not the jury to decide whether rape has been committed. 19 B. 735 1 W. R. Cr. 21.

—the judge should himself decide whether a communication is privileged. 10 W. R. Cr. 14.

—failure to draw the attention of the jury to vital points vitiates the trial. 85 I. C. 711; 26 Cr. L. J. 567 (C).

Sub-sec (2), the Judge may express his opinion in the summing up.

—where the judge states to the jury his impressions of the demeanour of witnesses without recording his views at the end of the deposition it does not amount to misdirection as the jury saw the witnesses themselves. 85 I. C. 716; 26 Cr. L. J. 572; 1925 Cal. 980.

—the judge in his charge to the jury ought not to express his own opinion in terms too dogmatic and unqualified although he informs them that they are not bound by any opinion of his. 18 C. W. N. 180.

—the judge should tell the jury that his opinion is not binding on them and that they are the sole judges of facts. 35 C. 531, 1930 Cal. 430; 1930 Cr. C. 657.

—It is open to the judge to express his opinion on any matter of fact, 10 C. 970, 99 I. C. 849; 1927 Nag. 117; 28 Cr. L. J. 117 and his impressions which the evidence has made upon his mind. 13 W. R. 34, following the last case it has been held that in many cases it is desirable that the Judge should tell the jury what view he has taken of the facts in order to enable them to consider the facts properly and to arrive at their own decision on them. 1928 Cal. 269.

—but he should refrain from expressing any decided opinion on matter of fact in unmistakable terms, 1 W. R. 2 1 W. R. 25, he should present the facts in their natural aspect. 14 M. L. T. 442, 2 Weir 386.

—if the Judge attempts to take the case out of the jury's province by something in the nature of impressing his own view upon the jury it is a case of misdirection. 110 I. C. 577; 1928 Oudh 326; 29 Cr. L. J. 721; 5 O.W. N. 497.

Miscellaneous.

—where the jury have delivered a verdict, the judge cannot again ask them to consider that verdict. The judge is only entitled to question the jury as to their verdict, where it is ambiguous or incomplete. 35 M. 585; 15 Cr. L. J. 197; 22 Ind. C. 981.

S. 290. Miscellaneous.—*contd*

—where the verdict is unintelligible and the Judge thinks it better to recharge the jury on a few points there is nothing in this Code to prevent him from doing so. But in such matter the Judge cannot cross-examine the jury. 37 C. Cl. 1935 Cr. C. 49. 1939 Cal. 120.

—in trials by jury though the law requires a judge to record only the heads of his charge still the record should include such statements and comments on the part of the judge as will enable the appellate court to understand exactly what he said. 26 C. W. N. 296. 35 C. L. J. 437. 1922 Cal. 192.

—after a clear verdict is returned by the jury it is not competent to the S. J. to ask the jurors their reasons. 4 Pat. L. T. 425; 1013 P. 474, 58 I. C. 829 *fol.* 3 Pat. L. T. 655 *Diss*.

—where a jury return a verdict of culpable homicide, it is the duty of the S. J. to require them to find expressly whether or not the accused is guilty of the minor offence. 2 Bom. L. R. 334.

—where the accused is charged for offence under ss. 147, 266 and 498 I. P. C. and the judge refers the jury to offences under s. 341 and 352 I. P. C. it does not amount to misdirection as the lesser offences falling under ss. 341 and 352 I. P. C. were included in the offence under s. 366. 53 C. 599; 44 C. L. J. 239, 1926 Cal. 1059.

S. 299. Duty of jury.

—under this sec. the jury have to weigh and value the evidence admitted by the judge and in order to value a confession since retracted, they must go into the question whether it was made voluntarily, as a free and voluntary statement is some guarantee of its truth. 85 I. C. 830; 26 Cr. L. J. 606. 1925 Cal. 887.

—although the jury are the sole judges of facts, still it is the duty of the judge to help the jury to find facts. He has to advise the jury as to the logical bearing of the evidence admitted upon the matters to be found by them. 23 C. W. N. 833.

—the jury is to decide which view of the facts is true. Rat. Un Cr. 748, 21 W. R. Cr. 72.

—the jury is to decide the question of identity of the thumb-impression. 1 C. L. J. 385, 2 Cr. L. J. 311.

—the jury may decline to rely on the evidence of an expert witness. 9 C. W. N. 520.

—the jury may return a verdict of guilty of a minor offence which is not triable by the jury and the judge may convict the accused of such minor offence although he is not charged with and tried for it with the aid of the jurors as assessors. 26 M. 243, 3 W. R. Cr. 41.

—the jury is to decide whether the possession of stolen property is recent enough to warrant a conviction for the substantial offence of dacoity. 26 M. 467.

—the law does not provide any particular form in which the jury ought to return their finding. 14 W. R. Cr. 59, 22 C. 377.

—where the jury first returned a verdict that they agreed with whatever opinion the judge might form but being sent back

S. 299. Duty of jury.—*contd.*

returned within a short time with a verdict of guilty and the judge
 ot agree with it, held that
 function in favour of the
 l. the conviction could not
 13 L. C. 70: 30 Cr. L. J. 54

—the jury is to take the law from the judge and not from the books or commentaries. 6 Bom. L. R. 258, 3 C. W. N. 693: 43 C. L. J. 537. 96 I. C. 270: 1926 Cal. 895.

—the Peshkar or the judge himself should explain the charge to the jury. Where however one of the jurymen had not the adequate knowledge of English and the Peshkar's translation also having appeared to be unsatisfactory it was arranged that public Prosecutor would translate the charge and the Mukhtear for the defence would take objection wherever necessary and ultimately the jury returned an unanimous verdict, held that as the procedure adopted did not prejudice the accused the conviction was not rendered illegal because of such a defect in the charge. 47 C. L. J. 449: 1928 Cal. 401: 109 I. C. 910. 29 Cr. L. J. 638.

S. 300. Retirement to consider.

—it is a matter of great importance that the sec. of the Act, which is explicit in its terms, should be observed. 22 C. W. N. 741.

—when after the charge had been delivered, a person other than a juror spoke to or held communication with a member of the jury without the leave of the court, it was sufficient to upset the verdict, and it was not necessary or relevant to consider whether the irregularity had in fact prejudiced the prisoner. 22 C. W. N. 741: 44 C. 723, 46 C. 207

—where during trial one of the jurors intimated to the pleaders' clerks, in answer to some questions put to him, that in his opinion the accused was guilty and the S. J. although informed of this fact, proceeded with the trial, it was vitiated. 25 C. W. N. 240.

—but the mere fact that a question was put by the jury to the judge not in open court but in chamber did not vitiate the trial but was at best an irregularity. 27 C. W. N. 626

—nor does the fact that during an adjournment one of the jurors was seen conversing with strangers but it did not appear that the conversation was about the case does vitiate the trial. 10 L. W. 379.

—after a charge is made to a jury the jury should not be allowed to disperse but should at once retire to consider the verdict. Where they were allowed to go home and come back some hours later and then considered their verdict the trial was vitiated. 6 Pat. L. T. 552: 86 I. C. 717: 26 Cr. L. J. 851: 1926 Pat. 495.

—where the jury retire to consider the verdict, all the jurors must be present in the retiring room together during the whole time of retirement, otherwise the verdict of the jury should be set aside. 1930 Cal. 446: 1930 Cr. C. 707.

S. 301. Delivery of verdict

—the jury should not be stopped to add anything to their verdict. 37 C 425

—when the verdict is not ambiguous the S. J. should record the verdict and apply the law thereto. 19 B 735, Rat Un Cr 412

—where the verdict of the jury was arrived at by casting lots and S. J. made an inquiry, the statement of a juror as to what happened in the jury room was inadmissible. 17 C W. N. 747 · 40 C 693 14 Cr L J 722 20 Ind C 216

—verdict of jury of "not guilty" fully establishes the innocence of the accused 15 C W N 645

—it is a dangerous thing for the court to rely upon anything except the verdict of the jury, or to listen to the deliberation of the jury or to the statements of individual jurymen made to this or that person after they had delivered their verdict 41 C 723

—Independent opinions of the jury are never intended to be disclosed. 36 M. 555

—where there are several accused the jury have to give their verdict on the facts against each man severally 16 C W N 909

S. 302. Procedure where jury differ.

—when the verdict is unanimous, it must be received by the judge unless contrary to law 3 C. 781 · 6 C L R 319

—it is only when the jury are not unanimous that the judge may require them to retire for further consideration. *abste case* and Rat Un Cr. 736, 15 B. 452, 8 C 739.

—when the jury are not unanimous, the court is not bound to summon a new jury 1 W R Cr. 41.

—in case of unanimous verdict the judge should not ask the jury the reason for acquittal Rat. Un. Cr. 736, 28 B. 412, 30 M. 469, 15 B. 452, 8 C 739, *contra*. 1 C. L R. 275, *nor* the judge can make minute inquiries 10 C 140 : 13 C. L. R. 358, 7 C. W N. 135.

—the Judge has no power to control the verdict of the jury. 7 W. R Cr 22

S. 303. Verdict to be given on each charge.

—s 303 limits the power of the judge to the asking of such questions as may be necessary to ascertain what their verdict is 22 M. L. J. 355 : 14 Ind C. 669 : 13 Cr L J 285

—the object of this section is merely to enable the Judge to ascertain whether the jury intend to return a verdict of guilty or not guilty The judge cannot interrogate the jury for any other purpose. 34 C W. N 283 · 1930 Cal. 443

—the Judge cannot ask the jury for their reasons after a clear verdict has been returned. 1928 Pat 203 : 7 Pat 55 · 9 Pat. L. T. 567 : 29 Cr. L. J. 466 109 I. C 114 : 34 C. W. N. 283 : 1930 Cal. 443

—the jury should return their verdict on each one of the heads of charge. Rat. Un. Cr. 746, 7 W. R Cr. 22.

—the jury may return verdict on a minor offence though not specially charged and not triable by the jury. 5 C. 871, 20 B. 215, 20 C. 483.

S 303. Verdict to be given on each charge.—contd.

—but where the accused were charged and tried for dacoity and the jury found them guilty of the offence of robbery, the conviction could not stand as a charge for that offence was not placed before the jury. 1928 Mad. 207: 28 Cr. L. J. 1007: 105 L. C. 831.

—the judge cannot stop a jury to add explanation to a verdict. 30 C. 485.

—in a case of incomplete verdict the judge is competent to put questions to ascertain precisely what they meant. A verdict obtained by means of such question is legal. 50 C. 658: 74 L. C. 950: 24 Cr. L. J. 538.

—where the verdict of the jury is confused and unintelligible the judge is to obtain from them a proper and correct verdict before accepting the verdict. 30 C. W. N. 693: 43 O. L. J. 537: 96 L. C. 270: 1926 Cal. 895: 27 Cr. L. J. 926.

—but it is not the duty of the Judge to accept and interpret for himself an unintelligible verdict when the jurors can give a proper one. 57 C. 61: 1930 Cal 320: 1930 Cr. C. 401.

—where the jury returned a verdict of "not guilty" under ss. 409 and 403 I. P. O. but "guilty" under ss. 218 and 477 I. P. O. the verdict was sufficiently clear. 27 C. W. N. 626: 1923 Cal. 647.

—where instead of a simple verdict of guilty or not guilty the jury gives a qualified verdict, it is the duty of the judge to put question to the jury and ascertain the scope of the verdict. 29 C. W. N. 54: 40 C. L. J. 555.

—where the verdict is ambiguous the judge may refuse to accept it and may require the jury to give proper verdict by means of questions put to them, 7 C. W. N. 135, Rat. Un. Cr. 710, 30 C. 485, but where it is not ambiguous though erroneous, he must record it without question. 9 C. 53: 11 O. L. R. 169, 30 M. 469, 32 C. 759, 765, 2 A. L. J. 475.

—where on a trial under s. 325 the jury returned a verdict of 'guilty but not voluntarily' and the Judge accepted the verdict as one of guilty and convicted the prisoner under s. 338, the judge was wrong as the verdict was in effect a verdict of 'not guilty,' 12 C. W. N. 580: 7 Cr. L. J. 362.

—in dealing with special verdict, the judge is confined to the facts positively stated in verdict and cannot of himself supply by intendment or implication any defect in the statement. Rat. Un. Cr. 710, 30 C. 485.

—there is no special form of returning verdict. 19 W. R. Cr. 59: 8 B. L. R. 557.

—when it is doubtful under what sec. or under what part of the same sec. the offence falls, the jury may return a verdict in the alternative. 5 C. 871: 6 C. L. R. 349, 13 B. L. R. 324 F. B.

—where in a case under s. 498 the jury's verdict as to the sum embezzled is not definite and the judge is inclined to differ he is bound to question the jury. 85 L. C. 372: 1925 Cal. 260: 26 Cr. L. J. 532.

S. 303. Verdict to be given on each charge —cont'd.

—the judge is justified in putting questions to the jury to ascertain what the verdict of the jury really is. 21 W. R. Cr. 1, 20 W. R. Cr. 5, 32 C. 759, 31 M. 467 but the judge should not make minute inquiries. 10 C. 144; 13 C. L. R. 354.

—where there are numbers of charges verdict on all the charges should be elicited by questions under s. 303 (1) and the questions and answers recorded under sub sec. (2). 84 L. C. 178; 26 Cr. L. J. 1020.

—the questions to the jury and their answers must be recorded in exact language used. 8 C. 757.

—whether, by reason of the provocation found by the jury, there was destruction of the power of self-control, could have been ascertained by the Judge by questioning the jury. 20 B. 215, but see 5 C. 871; 6 C. L. R. 349, 20 C. 423 & 11 C. 200, 3 C. 189.

—where the jury are not unanimous the judge may ask them to retire for further consideration. 6 Bom. L. R. 258.

—but where the verdict is ambiguous, vague or uncertain the judge should ascertain by questions what their verdict is and cannot direct them to retire for further consideration. 3 L. B. R. 73; 3 Cr. L. J. 1, 2 A. L. J. 475; 2 Cr. L. J. 357, 6 B. L. R. Ap. 6; 12 W. R. Cr. 35, 20 B. 215.

S. 304. Amending verdict

—the jury is *functus officio* as soon as its verdict is announced to the court and once a verdict is given there is no power in the court or the jury to consider that verdict except under the provisions of sec. 304 Cr. P. C. 771 C. 425; 25 Cr. L. J. 377; 1921 Lah. 17.

—the Judge is not bound to accept an absurd verdict either of guilty or not guilty. He is competent to tell the jury to consider the matter over again. 57 C. 61; 1930 Cal. 320; 1930 Cr. C. 401.

—if the jury returns an erroneous verdict, owing to mistake in understanding the law, it can be corrected only by the judge disagreeing with the jury and referring the case to the H. C. under s. 307. 28 B. 412; 6 Bom. L. R. 361, 6 Bom. L. R. 258, 19 B. 735, 21 W. R. Cr. 1, 22 M. L. J. 355; 13 Cr. L. J. 285; 14 Ind. C. 669.

—where an erroneous verdict is delivered by accident or mistake, the jury cannot amend or alter it. Rat. Un. Cr. 982, 22 M. L. J. 355; 14 Ind. C. 669; 13 Cr. L. J. 285; 23 B. 412.

—the power of amendment of verdict must be exercised before or immediately after the verdict is recorded and cannot be exercised after the jurors have dispersed. 13 Cr. L. J. 815; 17 Ind. C. 559; 9 P. W. R. 1913 Cr.; 6 P. R. 1913 Cr. P. C., 1913 P. R. 6 F. B.

S. 305. Verdict in H. C. when to prevail.

—the court as composed of the judge and jury at the first trial has legal seizin of the case and no other court can try the case. 8 C. W. N. 48 (note), 2 C. W. N. 48, 7 C. W. N. 31 (note).

S. 306. Verdict in court of Sessions when to prevail.

—when the verdict is accepted and the case postponed, the judge cannot reconsider his order and refer the case to the H. C. 4 C. W. N. 683.

S. 307. Sub-sec. (t). "If the Judge disagrees with the verdict of the jury."—*contd.*

Which judge can make the reference.

—the judge who may make a reference is only the judge who held the trial and heard the evidence and not his successor. 2 C. L. J. 43 : 2 Cr. L. J. 356.

—a judge of the said Judicial Commissioner's Court when trying a Session case cannot refer a case if the verdict of the jury is unanimous. 1925 Sind 149 : 111 I. C. 865 F. B., 1925 Sind 249 F. B.
Explained

"Necessary for the ends of justice."

—power of reference arises when having an opinion contrary to that of the jury the Judge thinks it necessary for the ends of justice to submit the case to the H. C. But due regard must always be had to the fact that the constitutional tribunal to decide questions of fact is the jury and not the judge. 32 C. W. N. 673 : 47 C. L. J. 493 : 29 Cr. L. J. 819 : 1928 Cal 414 : 111 I. C. 323.

—It is ordinarily a matter entirely within the discretion of the judge as to whether he should make a reference or not. The discretion should always be exercised when the judge thinks the verdict is not supported by evidence. 41 C. L. J. 320 : 87 I. C. 606 : 6 Cr. L. J. 1006 : 1925 Cal 795 : 23 C. W. N. 474 : 32 C. W. N. 673 : 7 C. L. J. 463 : 1925 Cal 414 : 29 Cr. L. J. 819 : 111 I. C. 323 : Pat. 817 : 1928 Pat. 120 : 29 Cr. L. J. 81.

—it is no longer the law that the judge before making a reference must be satisfied that the verdict is perverse. It is sufficient if in his opinion it is necessary for the ends of justice. 23 C. W. N. 747 : 46 I. C. 846 : 41 C. L. J. 320 : 25 C. 555.

—even in cases where the judge disagrees with the verdict of a jury, if he does not think that the ends of justice require a reference to the H. C. he need not do so. 50 C. 658 : 74 I. C. 950 : 18 Pat. 120 : 6 Pat 817 : 29 Cr. L. J. 81 : 106 I. C. 673 : 9 Pat. T. 191.

—reference cannot be made only on the ground that the question involved was a matter of importance. 9 C. W. N. note)

—it is ordinarily a matter entirely within the discretion of the judge as to whether he should make a reference, but where the conditions necessary to apply s. 207 are present it becomes obligatory on him to make reference. 41 C. L. J. 320 : 87 I. C. 606 : 26 Cr. L. J. 106 : 1925 Cal 795.

—reference is the only way in which the miscarriage of justice by a perverse verdict of the jury can be remedied by the H. C. 10 C. 13 M. 343.

—where the jury misunderstands the law as explained by the judge and delivers a wrong verdict the judge should refer the case to the H. C. and not ask the jury to reconsider their verdict. 412.

S 307. Sub-sec (i). If the Judge disagrees with the verdict of the jury.—*contd.*

—if the same body are in sit as jurors and assessors a reference cannot be based upon the answers submitted by the persons who were in fact the jury in their capacity as assessors. 1929 M. W. N. 281 F. B.

What is necessary for reference.

—it is no longer the law that before making a reference, the verdict is perverse; it is sufficient reference is necessary for the I. C. 606: 26 Cr. L. J. 1006:

—the conditions necessary for reference to H. C. are not merely disagreement with the verdict of the jury but also that the judge is clearly of opinion that it is necessary for the ends of justice to submit the case. It is quite impossible to direct the judge to be clearly of a certain opinion and the judge's view on that point is to be final for that purpose. 32 C. W. N. 673: 47 C. L. J. 483: 1928 Cal. 444: 29 Cr. L. J. 819: 111 I. C. 323

—it is not in every case of doubt or disagreement that a reference can be made but the verdict of the jury must be manifestly wrong before such reference can be made. 41 C. 621, 8 Pat. 344: 1929 Pat. 313: 10 Pat. L. T. 409: 1929 Cr. C. 99, 1929 Cr. C. 399: 1929 Cal. 737.

—a reference should be made only when the verdict is manifestly wrong and not in every case of doubt nor in every case in which a different view can be entertained. 8 Pat. 344: 1929 Pat. 313: 10 Pat. L. T. 409: 1929 Cr. C. 99: 117 I. C. 173: 30 Cr. L. J. 721.

—when the evidence is so open to hostile criticism as to justify the jury in regarding it with suspicion, the S. J. should not refer the case under this sec. 7 C. W. N. 145, 9 C. L. J. 432.

—the judge must confine himself to evidence properly given before him. 27 C. 295: 4 C. W. N. 129.

—the judge can refer a case to the H. C. only if he comes to the conclusion that the verdict of the jury is one which reasonable men could not come to on the evidence on the record. A mere disagreement with the verdict on the fact is not enough 51 M. 956: 1928 Mad. 1186: 55 M. L. J. 591: 1929 M. W. N. 185: 114 I. C. 343: 30 Cr. L. J. 317 F. B.

Reference as to minor charges after accepting the jury's findings on grave charges

—it is not always correct to say that a judge accepting the jury's findings on grave charges cannot make a reference with the object of having some of the accused convicted on minor charges. 37 C. L. J. 34: 73 I. C. 770.

Judge cannot reconsider.

—the S. J. cannot reconsider his judgment of acceptance of the verdict of the jury and then make reference. 4 C. W. N. 683.

S. 307. Sub-sec. (1). "If the Judge disagrees with the verdict of the jury."—*confd.*

Which judge can make the reference.

—the judge who may make a reference is only the judge who held the trial and heard the evidence and not his successor. 2 C. L. J. 49. 2 Cr. L. J. 356

—a judge of the Andhra Pradesh High Court when trying a Session case cannot refer a case if the verdict of the jury is unanimous. 1928 Ind 149 111 I. C. 865 F. B., 1925 Ind 249 F. B. *Explained*

"Necessary for the ends of justice."

—power of reference arises when having an opinion contrary to that of the jury the Judge thinks it necessary for the ends of justice to submit the case to the H. C. But due regard must always be had to the fact that the constitutional tribunal to decide questions of fact is the jury and not the judge. 32 C. W. N. 673; 47 C. L. J. 483 29 Cr. L. J. 819. 1928 Cal 444 111 I. C. 323

—It is ordinarily a matter entirely within the discretion of the judge as to whether he should make a reference or not. The discretion should always be exercised when the judge thinks the verdict is not supported by evidence 41 C. L. J. 320 87 I. C. 606: 26 Cr. L. J. 1006: 1925 Cal. 795. 23 C. W. N. 474. 52 C. W. N. 673: 47 C. L. J. 483; 1928 Cal 444. 29 Cr. L. J. 819: 111 I. C. 323, 6 Pat. 817: 1928 Pat. 120: 29 Cr. L. J. 81.

—it is no longer the law that the judge before making a reference must be satisfied that the verdict is perverse. It is sufficient if in his opinion it is necessary for the ends of justice 23 C. W. N. 747. 46 I. C. 846, 41 C. L. J. 320, 25 C. 555.

—even in cases where the judge disagrees with the verdict of the jury, if he does not think that the ends of justice require a reference to the H. C. he need not do so. 50 C. 658: 74 I. C. 950, 1928 Pat. 120 6 Pat. 817: 29 Cr. L. J. 81: 106 I. C. 673: 9 Pat. L. T. 191.

—reference cannot be made only on the ground that the question involved was a matter of importance. 9 C. W. N. 66 (note.)

—it is ordinarily a matter entirely within the discretion of the judge as to whether he should make a reference, but where the conditions necessary to apply s. 207 are present it becomes obligatory upon him to make reference. 41 C. L. J. 320: 87 I. C. 606. 26 Cr. L. J. 1006: 1925 Cal. 795

—reference is the only way in which the miscarriage of justice by a perverse verdict of the jury can be remedied by the H. C. 10 C. 1029, 13 M. 343.

—where the jury misunderstands the law as explained by the judge and delivers a wrong verdict the judge should refer the case to the H. C. and not ask the jury to consider their verdict. 28 B 412.

S. 307. "Necessary for the ends of justice—contd.

—where the jury returns their unanimous verdict of guilt in spite of the warning by the Judge pointing out great defects in the case for the prosecution, it was a proper case for reference 1928 Cal. 233.

—in a reference under this sec. the verdict of the majority of the jury should not be interfered with unless it is apparent that the case is very clear one. The fact that the verdict of the jury has the assent of one of the Judges of the H. C. is sufficient to show that the case is not so clear. 32 C. W. N. 783 : 117 I. C. 680 : 30 Cr. L. J. 820.

"Submit the case."

—the S. J. should state clearly in his reference on what portion of the evidence the accused should have been convicted. 7 C. W. N. 345, 1929 Pat. 16 : 9 Pat. L. T. 649 : 113 I. C. 694 : 30 Cr. L. J. 210, and also should state the points of difference with the jury. 10 Bom. L. R. 173 : 7 Cr. L. J. 192, 20 W. R. Cr. 70, 3 C. 623, where the order of reference did not contain those particulars the case was remitted to the S. J. for disposal. 1929 Pat. 16 : 30 Cr. L. J. 210 : 113 I. C. 694 : 9 Pat. L. T. 649.

—in making the reference the S. J. should confine himself to matters placed before the jury. 27 C. 295 : 4 C. W. N. 129.

—sub-sec. (2) only contemplates a reference in the case of those persons in respect of whom the judge declines to accept the verdict. 42 C. 789 : 19 C. W. N. 584 : 21 C. L. J. 492 : 16 Cr. L. J. 321 : 28 Ind. C. 657.

—but when the accused was tried on several charges and the S. J. accepted verdict of the jury as to some and disagreed as to others and referred the verdict as to the latter, the S. J. ought to have referred the whole case leaving the H. C. to consider the whole evidence. 21 C. W. N. 435, 9 Pat. L. T. 618 : 115 I. C. 229 : 1928 Pat. 596 : 30 Cr. L. J. 390, in this latter case the accused were charged under a 400/140 I. P. C. and the jury returned a verdict of guilty under s. 147 and the verdict under of not guilty under s. 302/149 I. P. C. and referred the case to the H. C., held that the whole case was open for consideration.

—the S. J. must refer the whole case against a particular accused and not merely those charges on which there happens to be a finding with which he disagrees. 1930 All. 489 : 1930 Cr. C. 733

—the judge should state in his reference that in his opinion it is necessary for the ends of justice to submit the case to the H. C. and that he disagreed with the verdict of the jury. 9 C. W. N. 66 (note.)

—where several accused were tried together for the same offence and the evidence was the same against all and the judge summed up for the acquittal of all and the jury returned a verdict

S. 307. Submit the case—contd.

of "not guilty" as regards one accused only and a verdict of guilty as regards the rest, held that the proper procedure was to refer the verdict of guilty as flagrantly perverse. 91 I. C. 960; 1926 Mad. 370; 27 Cr. L. J. 176.

"Recording the grounds of his opinion"

—this expression means that the Judge making the reference should in effect show the reasons for convicting the accused in as clear a manner as he would have done if the case had not been a jury case and he had to write a convicting judgment. 50 A. 540; 26 A. L. J. 296; 29 Cr. L. J. 342; 1928 All. 622; 108 I. C. 159.

—in making the reference the judge should state what material portions of the evidence he believes to be true and his reasons for arriving at his conclusion so as to enable the H. C. to appreciate them and to give due weight to them. 3 Pat. L. T. 413, 6 Bom. L. R. 519.

—the reference must contain the grounds of opinion of the judge, it should be so complete and self-contained that it ought not to be necessary to refer to the order sheet. 25 C. W. N. 682.

—the reference should set out on what portions of the evidence or on what facts the accused should have been convicted. 7 C. W. N. 345, 10 Bom. L. R. 173.

"Stating the offence."

—In case of an acquittal by the jury the Sessions Judge should state in his reference what offence the accused has in his opinion committed, and on what grounds he differs from the jury. 25 C. W. N. 682, 3 C. 623, 10 Bom. L. R. 173.

Sub-sec. (2). The judge shall not convict or acquit the accused.

—sub-sec (2) only contemplates a reference in the case of those persons in respect of whom the judge declines to accept the verdict. 42 C. 789; 19 C. W. N. 584; 21 C. L. J. 492; 16 Cr. L. J. 321; 28 Ind. C. 657.

—but when the accused was tried on several charges and the S. J. accepted verdict of the jury as to some and disagreed as to others and referred the verdict as to the latter, the S. J. ought to have referred the whole case leaving the H. C. to consider the whole evidence. 21 C. W. N. 435.

the judge to refer

H. C. should not enter
and refer the entire case
361; 1926 Cal. 925; 27 Cr.

Sub-sec. (3). Power of the High Court.***Perverse verdict.***

—the H. C. should not interfere with the verdict of the jury unless it is perverse. 29 C. W. N. 842; 41 C. L. J. 35; 89 I. C. 242; 1925 Cal. 909; 26 Cr. L. J. 1298.

S. 307. Sub-sec. (3). Power of the High Court—*contd.*

—the H. C. should only interfere where the jury has arrived at a verdict which is perverse or clearly or manifestly wrong. 22 A. L. J. 162 : 46 A. 265, 27 Cr. L. J. 773 : 1926 Nag. 308 : 22 N. L. R. 42, 1929 All 338 : 119 I. C. 443 : 27 A. L. J. 509, 2 A. L. J. 475, 1929 Nag. 113 : 30 Cr. L. J. 789 : 117 I. C. 277, 1926 Nag. 308.

—in a case of murder where the jury unanimously acquit the accused, it will not be interfered with on a reference unless it is quite perverse and unreasonable. 1923 Cal. 579, 38 C. L. J. 384.

—where the verdict of acquittal was shown to be amazingly perverse the H. C. could on reference convict the accused on the basis of the evidence in the case 1929 Oudh. 86 : 108 I. C. 900 : 29 Cr. L. J. 452 : 5 O. W. N. 216.

—the H. C. can place its own estimate of the evidence against the verdict of the jury, only when it is of opinion that the verdict is perverse. 26 Bom. L. R. 610 : 7 Bom. Cr. C. 162 : 83 I. C. 995, 41 C. 621.

Wrong verdict.

—the H. C. should not interfere with unanimous verdict of the jury unless it is clearly wrong. 38 C. L. J. 384.

Unreasonable verdict.

—in a case under s 307 the H. C. can refuse to accept the verdict of the jury only when it is unreasonable. 29 C. W. N. 738 : 42 O. L. J. 247 : 52 Cal. 937 : 1925 Cal. 876 : 88 I. C. 1000, 51 C. 160 : 28 O. W. N. 536 : 81 I. C. 712, 1929 Oudh. 28. 1929 Cr. C. 13 : 116 I. C. 207 : 30 Cr. L. J. 570, 56 M. L. J. 103 : 1929 M. W. N. 194 : 117 I. C. 787 : 1929 Mad. 135.

—from the mere fact that the jury cannot give their reasons beyond saying that they gave the accused benefit of doubt, the H. C. cannot hold that the jury had no adequate reasons for bringing a verdict of not guilty 41 O. L. J. 35 : 86 I. C. 453 : 1925 Cal. 525 : 26 Cr. L. J. 805.

—where there is a substantial gap in the chain of evidence which one generally expects to see completed in a case of murder
 y had not mentioned this point in
 'n for their verdict whatever may
 asking the jury of their reasons,
 the H. C. could not leave out of sight the fact that they had reasons
 for their verdict which they had not mentioned in answer to the
 judge's question. 38 C. L. J. 155.

—meaning of the words "subject thereto." 50 A. 625 : 26 A. L. J. 321 : 108 I. C. 225 : 29 Cr. L. J. 353 : 1928 All 207 F. B.

—It is the practice of the Chief Court not to interfere with the reasonable verdict of the jury if it be of the majority. 113 I. C. 103 : 1928 Oudh 277 : 5 O. W. N. 281.

Divided verdict of the jury.

—where there is divided verdict of the jury the majority giving the accused the benefit of doubt, the H. C. can after considering the evidence and the opinion of the S. J., set aside the verdict even

S. 307 Sub-sec. (3). Power of the High Court—contd.

though it is a question of fact and convict the accused. 51 C. 469 : 83 I C 304

Weight should be given to the verdict of the jury and to the opinion of the judge

—In dealing with a case under this sec. the H. C. will have to give due weight to the verdict of the jury and also to the opinion of the S. J. 41 C. L. J. 35, 29 C. W. N. 842, 51 C. 160, 28 C. W. N. 563 : 81 I. C. 712, 40 C. L. J. 135 : 28 C. W. N. 947, 17 C. W. N. 1707 : 6 P. L. J. 264, 41 C. 754, 3 P. L. T. 413, 15 C. 269, 29 C. 128.

—s. 307 does not put the opinion of the jury on any higher plane, both should be given due weight, but as a general rule more weight should be attached to the opinion of the judge than of the jury as he is trained to weigh and appreciate the evidence and give reasons for his opinion whereas the jury are a body of laymen unaccustomed to weigh or appreciate evidence and give no reasons for their opinions 55 C. 879 : 1928 Cal 732, 29 Cr. L. J. 823 : 111 L. C. 327

—the H. C. must consider the entire evidence and must give due weight to the opinions of the S. J. and the jury 13 C. W. N. 757 : 36 C. 629, 17 C. W. N. 1077

—the H. C. should give due weight to the opinion of the S. J. and of the jury after considering the entire evidence and then convict or acquit the accused. The H. C. need not re-construct the verdict of the jury and it should always hesitate to reverse the unanimous verdict unless it holds it to be unreasonable. 40 C. L. J. 135 : 28 C. W. N. 947 : 81 I. C. 145, 86 I. C. 712, 45 M. L. J. 406, 36 C. 629, 9 C. L. J. 432, 15 B. 452, 1 P. L. T. 657.

—when the case rests entirely on oral evidence the H. C. should uphold the verdict of the jury, for as they saw and heard the witnesses they were the most competent to judge as to the value of oral evidence. 40 C. L. J. 592.

—the real test to be applied is to see whether it can be said that the verdict was so unreasonable that reasonable men could not have arrived at that verdict. 28 C. W. N. 876 : 82 I. C. 356, 4 Pat. L. T. 425.

—when one of two inferences is possible upon the evidence the H. C. will not interfere with the finding of the jury even though the Court is of opinion that it would have drawn the other inference in case of its being a court of appeal. 97 I. C. 17 : 1926 Pat. 566 : 27 Cr. L. J. 104

When the H. C. should not interfere.

—where the verdict of the jury is reasonable one and based on the honest opinion, the H. C. will not interfere on reference under this section. Human opinions honestly held may differ on all questions, but the test to be applied with regard to the honesty of such opinion is whether any reasonable man, on the materials before him, can hold it. 51 C. 708 : 1927 Cal. 848 : 28 Cr. L. J. 903 : 105 I. C. 231

S, 307. Sub-sac. (3) Power of the High Court—*contd.*

—it is not the practice to interfere with the verdict of the jury unless it is wrong and there is sufficient materials to justify it. 50 C. L. J. 518; 1930 Cal. 141; 1930 Cr. C. 141, or unless there is misdirection in the judge's charge to the jury. 51 C. L. J. 352; 1930 Cal. 437.

—the H. C. will not substitute a conviction in place of jury's verdict of not guilty unless it appears that the jury had acted in a very unreasonable manner. 56 C. 132; 32 C. W. N. 952; 116 I. C. 171; 30 Cr. L. J. 584; 1929 Cal. 287; 32 C. W. N. 894; 117 I. C. 602; 30 Cr. L. J. 804 and the possibility of the jury having been biased is no ground to substitute a conviction. 32 C. W. N. 894; 117 I. C. 602; 30 Cr. L. J. 804.

—the H. C. will set aside unanimous verdict of the jury where the prosecution has not adequately proved its case and when the facts are suspicious and will give the benefit of doubt to the accused. 30 C. W. N. 89; 1926 Cal. 1034, it will also interfere where there are suspicious circumstances which show that the story put forward on behalf of the prosecution is not acceptable. 44 C. L. J. 233.

—where the opinion of the S. J. expressed in his letter of reference was inconsistent with what he expressed in his summing up and the majority of the jury acting on his summing up acquitted the accused having regard to the fact that the jury were judges of fact the H. C. would not interfere. 37 C. L. J. 30.

—if the verdict of the jury turns upon the appreciation of oral evidence capable of being viewed either way, but as to which the court takes a different view the H. C. will not interfere. But where the evidence is so coercive it is impossible to draw any conclusion except one adverse to the accused, it is the duty of the H. C. to interfere. 4 Pat. L. T. 425; 1923 P. 474.

—the H. C. cannot interfere if the S. J. has refused to refer the case and there has been no material misdirection or failure of justice. 4 M. L. T. 483; 14 M. 36; 13 Bom. L. R. Ap. 19; 13 M. 343.

—the H. C. should not interfere in a reference under this section against the verdict of the jury unless it is of opinion that it could not be supported by the evidences on the record. 5 Pat. 573; 1926 Pat. 535.

—when the jury's verdict is neither perverse nor unreasonable it should be adopted. 1927 Oudh 607.

—the verdict of the jury has more weight than the opinion of assessors and should not be set aside particularly in the case of a verdict of acquittal unless no sensible man could have come to such verdict. 1928 Pat. 497; 9 Pat. L. T. 683; 8 Pat. 74.

Power to be exercised by the H. C.

—the powers of the H. C. in the matter of a reference are not
 appeal under s. 449. 97 I. C. 17; 1926
 next case.

. the H. C. when hearing reference,
 C. exercises all the powers which it

S. 307. Sub-sec. (3). Power of the High Court—contd.

exercised on appeal 47 B 31; 24 Bom. L. R. 484; 1929 Bom. 369, 30 Cr. L. J. 390; 115 I. C. 219; 9 Pat. L. T. 618; 1928 Pat. 596, but such powers should not be exercised in the full. 46 A. 265.

—on reference the H. C. could not consider the question in respect of which the judge and the jury agreed 18 C. W. N. 669; 41 C. 662; 15 Cr. L. J. 155; 22 Ind. C. 731.

—the H. C. cannot re-open the verdict of the jury on a certain question when the judge agrees with it 50 C. 41; 74 I. C. 267; 24 Cr. L. J. 763.

—the H. C. should be reluctant in interfering with the unanimous verdict of the jury. 33 C. L. J. 1, 46 A. 265, 2 A. L. J. 475, 4 P. L. T. 425, 30 C. L. J. 503, 38 C. L. J. 155.

—under s. 307 the H. C. has full power to re-open all matters
 jury with which the S. J.
 81 I. C. 629, 50 A. 625; 26
 29 Cr. L. J. 333 F. B., 50

—when the S. J. disagrees with the verdict of the jury the H. C. may, on reference, go into the facts of the case. 6 Lah. 98; 88 I. C. 857; 28 Punj. L. R. 263.

—under s. 308 Cr. P. C. read with sec. 428 Cr. P. C. the H. C. has power to call further evidence 56 C. 566; 33 C. W. N. 632; 1929 Cal. 244; 30 Cr. L. J. 1031; 119 I. C. 378; 50 C. L. J. 1.

—under s. 307 the H. C. can place its own estimate of the evidence against the verdict of the jury, only if it is of opinion that the verdict is perverse 26 Bom. L. R. 610; 83 I. C. 955, (41 C. 621, 17 Bom. L. R. 217) *fol.*

—in acting under s. 307 the H. C. must act with great caution as it has not the advantage which the judge and the jury had: *e.* to see the witnesses giving evidence. 38 C. L. J. 379, 51 C. 271.

—the High Court's duties under this sec. do not end by merely finding that the defence story is one which cannot be accepted. The H. C. is to base its finding on evidence on the record. 38 C. L. J. 1; 75 I. C. 145.

—the H. C. can decide for itself the question of guilt or otherwise of the accused. 11 C. W. N. 715, 29 C. 128, 9 C. L. J. 432, but in doing so it must consider the opinion of the judge and the verdict of the jury, 15 C. 169, 15 B. 452 the opinion of the minority no less than of the majority, will be considered, 36 C. 629, the H. C. is also to consider the reasonableness of the verdict. 9 C. 53; 11 C. L. R. 169, 20 B. 215.

—the H. C. is bound to consider the entire evidence in the case and then give due weight to the opinions of the S. J. and the jury. 29 C. 128; 17 C. W. N. 1077, 14 Cr. L. J. 556; 21 Ind. C. 156, 15 B. 452, 9 C. L. J. 432; 10 Cr. L. J. 57, 36 C. 629, 7 C. W. N. 135 *Ref.*

—the H. C. in dealing with a reference can under s. 230, convict an accused person of the minor offence without a formal charge. 22 C. 1005, 37 M. 236.

S. 307. Sub-sec. (3). Power of the High Court—contd.,

—ordinarily the H. C. cannot convict the accused for any offence with which he was not charged, 41 C. 862, though the H. C. can convict an accused for a minor offence for which he was not charged, 22 C. 1006 but the H. C. on a reference cannot invent another common object to support conviction, 51 C. 271.

"Opinions of Sessions Judge and Jury."

—there is no provision to take the opinion of each jurymen. "opinions of S. J. and the jury" in the sec means opinion of S. J. and verdict of the jury. 18 C. W. N. 615 : 18 C. L. J. 522 : 15 Cr. L. J. 31 : 22 *Ibid* C. 175.

—the opinion of the judge is expressed in the reference or at the hearing, while the verdict contains the opinion of the jury. 45 M. L. J. 406 : 1923 M. W. N. 695.

—the opinion of the jury in this sec. means the verdict of the jury, and when the verdict of the jury is divided it includes the opinion of the minority of the jury. 36 C. 629 : 13 C. W. N. 757, 9 C. L. J. 638 : 10 Cr. L. J. 32 : 2 Ind. C. 497, 5 C. L. J. 224, 41 C. 621, 7 C. W. N. 135.

—there is nothing in sub-sec. (3) warranting the interpretation of the term "opinion" in it to mean anything other than the respective conclusions of the judge and jury, 29 M. 91 F. B., approved in the above case.

—opinion of the jury is its verdict and not the reason on which the verdict is based. 3 Pat. L. T. 413 : 1922 Pat. 218 : 67 L. C. 581, 36 C. 629, 18 C. W. N. 615, 51 C. 347, 29 M. 91 F. B.

—the referring judge should ascertain from the jurors the reason for their opinion. 1 P. L. T. 657, 3 P. L. T. 413, specially when there is some inconsistency in their verdict. 36 C. 629, 6 P. L. J. 264.

Hearing of reference.

—the hearing of reference submitted under this sec. is not an original F. B.

—opinion, the procedure laid down by the judge in the case referred to a third

reference acts as a Court of its own judgment. 29 C. 286, Ratanlal. 691.

—when a case is referred to the H. C. the trial cannot be deemed to be concluded until the decision of the H. C. 9 A. 420.

S. 308. Retrial of accused after discharge of jury.

"If a jury is discharged in the course of a trial for misconduct the judge should hold a fresh trial before another jury newly empanelled. 50 C. 872.

—if a jury is discharged in the course of a trial for misconduct the judge should hold a fresh trial before another jury newly empanelled. 50 C. 872.

S. 308 Retrial of accused after discharge of jury—contd.

—this sec does not affect the construction of s. 403 Cr. P. C. a "retrial" under this sec. is not being tried again within the meaning of s. 403 41 C. 1072.

—an entry to the effect that there should be no retrial on the charge operates as an acquittal, the Judge cannot pass remarks implying the guilt of the accused 1929 Sind 145 : 1929 Cr. C. 313 : 118 I. C. 195 : 30 Cr. L. J. 677.

S. 309 Delivery of opinions of assessors.

—the assessors are to give their opinions orally and not in writing or in the form of judgment. 39 C 119

—a trial is altogether vitiated if the assessors are not asked and an opportunity is not allowed to give an independent opinion on the case The cross examination of the assessors is entirely contrary to law This sec. gives the judge no power to question the assessors until they have delivered their opinions orally and he has recorded them If there is anything obscure in their verdict there is no objection to the judge asking questions to clear up such obscurity, but he is bound to allow the assessors to express their own opinion independently in their own words on the whole case before interfering with them in any way or asking them any question whatever except "what is your opinion" 40 C. 163, 13 Cr. L. J. 497 : 15 Ind. C. 641 22 C. 377 Ref. 12 C. W. N. 498 : 15 Cr. L. J. 385 : 23 Ind. C. 985 Ref. 41 C 350.

—the power of summing up the evidence should be exercised by the S. J. under this sec. in long and intricate cases and he should obtrude on the assessors his own opinion on the worthlessness or otherwise of the evidence. 9 C 875 : 12 C. L. R. 606.

—when the S. J.'s view differs from the opinion of the assessors it is his duty to record in his judgment the opinion of the assessors with the reason given by them. 48 P. R. 1905 Cr. : 192 P. L. R. 1905 : 3 Cr. L. J. 132, 26 M. 589, 24 M. 523, 3 W. R. Cr. 21, 8 C. L. J. 59.

—the opinion of the assessors must have regard paid to it but after all, it is the judge who is to decide the case on the facts as well as law. 14 Bom. L. R. 710 : 13 Cr. L. J. 677 : 16 Ind. C 325, 1924 All. 511.

—assessors cannot be asked to consider their opinion. 1886 A. W. N. 22.

—opinion of each assessor should be separately taken, 9 C. 875, 41 P. R. 1887, and on each distinct charge. 22 W. R. Cr. 34, 109 I. C. 497 : 1928 Nag 257 : 29 Cr. L. J. 561 : 10 A. I. Cr. R. 358

—personal knowledge of the assessors cannot be imported to the judgment. 24 W. R. Cr. 28

—the record of the opinion of each assessor should appear at the commencement of the judgment. 26 M. 598

—the S. J. cannot take evidence after the assessors have given the opinion. 29 P. R. 1888, 1889 A. W. N. 181, 15 A. 136.

—judgment by the successor of the judge is illegal 21 W. R. Cr. 47, 8 C. L. J. 59 : 8 Cr. L. J. 121.

S. 309. Delivery of opinions of assessors—contd.

—the assessors cannot be recalled. 1 W. R. Cr. 40.

—where the judge accepted the opinion of the assessors as to the finding of the accused not being guilty of abetment of murder but convicted the accused for causing disappearance of the evidence of murder without putting the same to the assessors, held it was imperative to take the opinions of the assessors. 25 Bom. L. R. 1318.

—where the accused is convicted of an offence with which he is not charged the Judge is not bound to require the assessors to state their opinion. 1929 Sind 147; 1929 Cr. C. 315 30 Cr. L. J. 875; 118 I. C. 193.

S. 310. Procedure in case of previous conviction.

—this sec. is expressly made applicable to trials before the Court of Sessions only and not to trials before the M. 50 C. 367; 1923 Cal. 707.

—this sec. lays down a special form of trial of the issue of liability to enhanced punishment in consequence of previous conviction. 50 C. 367; 1923 Cal. 707.

—a previous conviction can only be taken into consideration after the accused is found guilty. 39 B. 326.

—where previous conviction was admitted before defence evidence had been taken the conviction was set aside. 10 C. W. N. 195 (note), *contra*. 50 C. 367.

—previous conviction should be proved by copies or extracts from judgments or by any other documentary evidence and the examination of the accused in respect of the convictions is, having regard to sec. 342 Cr. P. C. without warrant or justification. The S. J. is however justified under this sec. in passing sentence on the accused on admission by him of such previous conviction which should not be interfered with unless the accused has been prejudiced. 28 C. 689; 5 C. W. N. 670, 26 C. 49, *fol.* 28 B. 129, 3 L. B. R. 208 *Ref.*, 27 M. 238.

—the S. J. cannot call upon the accused to plead to previous conviction pending a reference to the H. C. 30 M. 134.

—identity must be proved. 2 Weir 393, 6 B. L. R. Ap 151, 1881 A. W. N. 144.

—admission of evidence of a previous conviction and the framing of a charge under s. 75 I. P. C. before the accused is called on for his defence, is not illegal. 50 C. 367; 1923 Cal. 707.

—further charge about previous convictions and the accused's statement in respect thereof should not be read out and the accused should not be questioned in respect thereof unless and until he has been convicted or the opinions of the assessors have been recorded on the charge of the subsequent offence. 103 I. C. 203; 28 Cr. L. J. 667; 1927 Lab. 774.

S. 311. When avoidance of previous conviction may be given.

—circumstances under which previous conviction would be relevant under s. 14, 43, and 54 of the Ev. Act 1 C. W. N. 146, 4 C. W. N. 97, 27 C. 139, 14 C. 721 F. B.

—in a trial of offence under ss. 395 and 402 I. P. C. the evidence of previous conviction is not permissible under sec. 54 Evl. Act, no evidence having been previously offered of the accused's good character. Nor does ss. 6 and 14 Evl. Act justify the admissibility 5 P. L. J. 706.

S. 321 List of jurors and assessors.

—persons of an independent condition of life, men of judgment and experience should be chosen as jurors and assessors, 23 W. R. 35, but men of high social position such as a hereditary Raja, should not be summoned to serve as juror or assessor unless it were known that he would be willing to act as such 1897 A. W. N. 167.

—assessors can be chosen only from the list prepared under this section Ratanlal, 304.

S. 326. District Magistrate to summon jurors and assessors.

—the duty of issuing a precept to the District Magistrate to summon jurors and assessors is imposed on the Sessions Judge and cannot be performed by a subordinate though in charge of the current duties of the Court of Sessions. Ratanlal 148.

—in a murder case where the number of jurors summoned were 14, none of whom appeared and were chosen by lot the trial was not bad by reason of the fact that only 14 jurors had been summoned in contravention of the provisions of ss. 274 and 326. 34 C. W. N. 296: 51 C. L. J. 171: 123 I. C. 664: 1930 Cal. 212: 31 Cr. L. J. 536: 1930 Cr. C. 212 F. B., 1927 P. C. 44 approved 25 M. 61 P. C. Dist. (33 C. W. N. 1053 and 1930 Cal. 60) overruled.

—the legislature does not intend to have a large area of selection in the persons attending upon the summon on the theory that larger is the number of effective names in the ballot box the greater the chance that the persons chosen will make good jurors 51 C. L. J. 171: 34 C. W. N. 296. 123 I. C. 664: 1930 Cr. C. 212: 1930 Cal. 212 F. B.

—all assessors should be summoned on the first day on which a criminal sessions commences although many trials may be proposed to be held in the course of that sessions. 17 Cr. L. J. 17 (All).

—where only three jurors having attended, the judge summoned jurors from among the residents of the town on the day fixed for the trial, held that the jury was not properly constituted and there was a serious irregularity not to be cured by s. 537. 7 C. W. N. 188.

—objection as to the constitution of the jury cannot be taken for the first time at the hearing of the appeal. 34 C. W. N. 106: 1930 Cal. 291: 1930 Cr. C. 379.

S. 332. Penalty for non-attendance of juror or assessor.

—conviction based on service of summons by registered letter is bad. 1 C. W. N. 116 (note)

—a jury-man cannot be fined for non-attendance when at the time of service he was away from home. He has no obligation to notify his address to the court. 6 C. W. N. 887.

—there is no appeal from an order of fine but the court may reconsider the ground of absence. 8 W. R. Cr. 83.

S. 333. Power of Advocate General to stay prosecution.

—this sec. is no bar to fresh proceedings being taken before a competent Magistrate upon complaint or Police report or under s. 190 (c) 40 C. 71 : 16 C. W. N. 983.

—the Advocate General may enter a *nolle prosequi* and the accused shall be discharged, 2 C. W. N. 481, 7 C. W. N. 31 (note). 8 C. W. N. 41 (note), 41 C. 1072.

—the effect of a *nolle prosequi* entered into by the Advocate General is to put an end to the particular indictment on which he was brought before the court and he cannot be proceeded against on the same charges. 52 C. 590 : 89 I. C. 709 : 1925 Cal. 902 ; 25 Cr. L. J. 1397.

S. 337. Tender of pardon to accomplices.

Amendments.

This section has been considerably altered, its scope broadened and the procedure relating to tender of pardon fully set out. Now the sec applies also to offences other than exclusively triable by the H. C. or the S. C.

Scope of the sec.

—this sec does not suggest the idea that the only method of obtaining the evidence of one co accused against another is by tendering pardon to him with all the safeguards mentioned in the sec. and this sec. does not control sec. 494. 1929 Cal. 319 : 56 C. 1023 33 C. W. N. 468.

In which cases pardon may be tendered.

—the pardon granted to an accused in a case not triable exclusively by the Court of Sessions is illegal. 25 M. 61 F. B. *But the scope has been broadened by the amendment*

—the approver is an approver with regard to the whole case and not as regards some of the accused only. When pardon is tendered with regard to an offence triable exclusively by the S. J. the fact that there may be other offences does not invalidate the pardon. 87 I. C. 965 : 26 Cr. L. J. 1945 : 1925 Nag. 403.

—where the offence originally charged being triable by the S. C. exclusively is subsequently altered to a charge not exclusively triable by him, the validity of the pardon is not affected 81 I. C. 881 : 25 Cr. L. J. 1057.

S. 337. In which cases pardon may be tendered—contd.

—all that this sec. requires is that there should be an investigation in progress regarding an offence triable exclusively by the H. C. or the Court of Sessions for an offence punishable with imprisonment which may extend to ten years, 1925 Nag 317 : 26 Cr. L. J. 1115 : 89 I. C. 243.

—the granting of *locus penitentiae* is a matter of judicial discretion and it should not be granted in a case where the accused has made two contradictory statements. 1929 All. 321 : 27 A. L. J. 227 : 120 I. C. 125

Approver's disclosure may not be reduced to writing.

—the disclosure of facts by the approver may not be reduced to writing. If it was made orally the verbal testimony of the person to whom it has been made will be sufficient to prove the same. But the practice of reducing it into writing is obviously very desirable so that no dispute may subsequently arise. 29 Punj. L. R. 165 : 29 Cr. L. J. 413 : 1918 Lah. 320 : 108 I. C. 514.

To whom pardon can be tendered.

—under this sec. it is not necessary that the person to whom pardon is tendered should himself be charged with an offence triable exclusively by the Court of Sessions. All that is necessary is that he should be directly or indirectly concerned in or privy to such offence. 6 N. L. J. 144 : 73 I. C. 262 : 24 Cr. L. J. 566.

—a pardon may be tendered to a person even after a charge has been framed against him. 22 Cr. L. J. 255 (Lah.).

—a pardon can be tendered to an approver in the course of an inquiry even though the principal offender has absconded and the trial therefore cannot proceed. In such case the approver's statement will be recorded under s. 512. 46 B. 120.

—pardon cannot be tendered to a person whose complicity in the crime is not admitted by itself as such person cannot be considered to be an approver. 24 Cr. L. J. 799.

—a tender of pardon to a person who had already pleaded guilty but who had not been sentenced on his plea, is not illegal though he may no longer be regarded as a respected offender. 25 M. 61 P. C.

—no man ought to be treated as an accomplice on mere suspicion unless he confesses that he had a conscious hand in the crime. 11 Bom. L. R. 1153 : 10 Cr. L. J. 530, 27 M. 271.

—persons who assist in concealing a crime already committed are not accomplices. 27 M. 271, 23 C. 361.

—persons who admit that they were cognizant of the crime and made no attempt to prevent it and did not disclose its commission are not accomplices but their evidence ought to be treated with suspicion. 24 W. R. Cr. 55, 21 C. 328, 61, 27 C. 144, 20 W. R. Cr. 19, but spies and informants who with a view to lay trap for suspected person suggest to him the commission of an offence and supply him with the means for committing it, are themselves abettors of the offence and accomplices. 19 B. 363.

S. 337. Who can tender pardon.

—a Magistrate of a district cannot tender pardon to a person implicated in an offence committed in another district and inquired into in the latter district. 20 A. 40.

—a Deputy Commissioner trying a case triable exclusively by the Sessions Court, under the power conferred by s. 30 can tender a conditional pardon to an accused. 10 O. W. N. 847.

—when a case is under investigation, a M. can tender pardon only with the sanction of the District M., 5 A. L. J. 691.

—where a first class M. under the authority of the Dt. M. tendered pardon to an approver at a time when the offence was under investigation by the police and the approver subsequently gave evidence the pardon was validly tendered. 3 Loh. 431 : 75 I. C. 365. 24 Cr. L. J. 941.

Power and duty of the M. tendering pardon.

—the M. tendering pardon is not competent to try the case. 10 C. W. N. 847. 4 Cr. L. J. 44, 3 P. R. Cr. 1898, 82 I. C. 573 : 25 Cr. L. J. 1341, 88 I. C. 736 : 1925 Oudh 472, but the Dt. M. sanctioning the tender of pardon to an approver is not so precluded. 1919 P. R. 30.

—where in a case of robbery the M. grants a conditional pardon to an approver and is satisfied that there is *prima facie* case, he has no jurisdiction to dispose of the case himself but is bound under s. 337 (2) (a) to commit the case to sessions. 4 Bur. L. J. 11. 86 I. C. 477.

—the M. tendering pardon should explain the conditions which accompany the tender. 12 W. R. Cr. 80.

—a M. tendering a conditional pardon should record his reasons for so doing but where the facts which led up to the tender to state reasons does not vitiate
L. J. 142, 36 C. 629, 13 C. W. N. 757.

—the omission to record reasons for tendering a pardon is neither an illegality nor an irregularity which vitiates the proceedings. 5 Lah. L. J. 407.

—an approver to whom pardon has been granted cannot be committed to sessions by the M. acting under this sec. but such commitment does not vitiate the trial against other accused. 30 Cr. L. J. 567 : 1929 Oudh 190 : 116 I. C. 193.

Power of Local Government.

—the tender of pardon by the Local Government although of doubtful validity in law can in no way be regarded as an inducement or threat illegally held out to an accused person to disclose or withhold any matter within his knowledge. 5 C. L. J. 224 : 5 Cr. L. J. 142.

—the Local Government cannot offer conditional pardon. 10 C. W. N. 847, 10 C. W. N. 962 : 33 C. 1353, 5 C. L. J. 224.

S. 337. Power of Local Government—contd.

—this sec has nothing to do with the power of discretion of an executive authority such as a Local Government in the matter of instituting or refraining from instituting any prosecution 45 A. 256: 21 A. L. J. 42.

—an approver cannot be examined as a witness unless and until he has been discharged by a written order, a mere promise of immunity from prosecution given by the Local Government does not amount to an order of discharge which requires a formal order, 1 Lab. 102. 1904 P. Q. 21 Diss.

Forfeiture of pardon.

—a witness who, after accepting a tender of pardon, makes a full and true disclosure, is not at liberty to subsequently contradict his statement without any risk of forfeiting his pardon. 33 M. 514: 7 M. L. J. 121: 1910 M. W. N. 5. 11 Cr. L. J. 254.

—no formal withdrawal of pardon and no formal declaration of the forfeiture of pardon are required to proceed against a person who accepted a conditional pardon but violated the conditions. 19 C. W. N. 17 Cr. 27 Ind. C. 164: 16 Cr. L. J. 120, 37 A. 331.

—non-forfeiture of pardon may be pleaded by the accused, and it becomes one of the issues to be heard. above case. 11 A. 79.

—when one accused who was given the pardon forfeited it before the committing M. who committed the case to the Court of Sessions, the latter might take a special verdict from the jury as to the first issue as to whether he had forfeited the pardon. 19 C. W. N. 295: 42 C. 657: 16 Cr. L. J. 65, 30 B. 611.

—the validity of a pardon will not be affected by the fact that the co-accused against whom his evidence was afterwards recorded was ultimately convicted of a minor offence. 97 I. C. 367: 27 Cr. L. J. 1103. 1926 All. 90.

—an approver fails to comply with the condition on which a tender of pardon is made as soon as it is established that the disclosure is not a true and full one and it becomes apparent to him so as soon as he is shown to have a statement entirely inconsistent with the one upon the strength of which the pardon was tendered.
 examined at the trial of the
 each on the part of the
 the trial of the approver
 J. 413: 108 I. C. 514:

1928 Lab 320.

Discharge and re-arrest of approver.

—at the end of the trial approver must be discharged by the court and the Crown may re-arrest him. 30 B. 611.

at an approver till after the
 finished, and his trial should
 ry to take proceedings against
 4 A. 502, 4 U. B. R. 7: 7 Cr.

1928 Lab 320.

S. 337. Discharge and re-arrest of approver—contd.

—the approver shall be, unless he is on trial, detained until the termination of the trial. 8 L. B. R. 357, 37 B. 146.

—sanction of the H. C. for prosecution of approver is to be obtained by motion in open court and not by letter of reference. 30 P. W. R. 1912 Cr. : 175 P. L. R. 1912, 230 P. L. R. 1912 : 13 Cr. L. J. 451.

—where the approver deposes to crimes which are not part of the inquiry without being warned against making incriminating statements and proceeding on the footing that the pardon covered the whole field, he could not subsequently be tried for offences which he deposed to, the pardon being a bar. 96 I. C. 509 : 1926 Pat. 279 : 27 Cr. L. J. 957 : 5 Pat. 171.

Appear as witness, sub-sec. (2).

—according to the sub-sec. (2) the approver shall be examined as a witness "in the case" which includes the preliminary inquiry. 24 M. 321, 11 N. L. R. 59 (*this is the law under the present amended section*).

—any person who has taken pardon under s. 337 must be examined as a witness in the court of committing M. and in the subsequent trial of any person tried for the offence, provided the approver can be physically produced. Non-compliance with this provision renders the trial illegal. If the approver dies after giving evidence before the committing M. the provisions need not be complied with but the fact that the approver is untrustworthy or that he gave a false story does not absolve the court from complying with the statutory provision. 1930 Lah. 95 : 11 Lah. 230 : 120 I. C. 489 : 31 Cr. L. J. 111.

—failure to comply with the provisions of s. 337 (2) is an illegality and not an irregularity 1930 Lah. 95 : 11 Lah. 230 : 120 I. C. 489 : 31 Cr. L. J. 111.

—there is no provision of Indian statutory law nor is there any principle of natural justice which makes an accomplice, as such, an incompetent witness at the trial of another person in respect of the offence in the commission of which he was an accomplice. 45 A. 226 : 21 A. L. J. 42

—competency of the witness is not affected but his credibility may be affected by the assurance of amnesty given to him. 1925 Nag. 313, 1923 All. 343 *fol*

—great caution is necessary in admitting and using the evidence of an approver. It not only requires corroboration in material particulars for its use but as evidentiary value depends considerably upon the circumstances under which his evidence was tendered. 33 C. 1353.

—the evidence of the approver should not be believed without material corroboration. 12 Cr. L. L. J. 35 : 1911 P. W. R. 3 and it is unsafe to convict an accused upon such testimony. 19 W. R. 68. 20 W. R. 19, 1916 P. W. R. 6, 29 C. 782, although it is not illegal. 7 A. 16, 1 M. 394, 5 W. R. 80, 15 W. R. 37, 6 B. L. R. 108.

S. 337. Apppear as witness. sub-sec. (2)—*contd.*

—as to the amount of corroboration necessary there is no hard and fast rule, 24 C 337, there should be corroboration of important circumstances of the story. 11 W R. 21, identity of the prisoner, 3 B. H. C R 57 10 B 319, 1 B 475, 21 W. R. 69, 18 C. W. N. 550, presence of the prisoner at the scene of offence or his participation in the commission thereof, 19 W R. 16

—where three police officers acted in conspiracy to demand illegal gratification the testimony of accomplices who were really victimized by them into offering them illegal gratification and had not willingly done so, would require a much slighter degree of corroboration than would be the case if the accomplices were entirely voluntary accomplices 1929 Bom 296, 53 B. 479, 31 Bom L. R. 515: 1923 Cr C. 114

—if a person has been merely an accused of an offence but has not been proceeded against he is a competent witness. 10 C. L. R 553

—when persons, accused of the same offence, are separately tried each is a competent witness in the trial of the other, without resorting to this see 23 B. 213, 5 Cr L J. 300 U. B. R (1906) Ev. 3, 23 C W N 493 45 C 720: 19 Cr L J 603

—the evidence of an accused taken under a conditional pardon is wholly inadmissible 10 C W. N. 817: 4 Cr L J. 44, 33 C 1353, 9 P. R 1906: 4 Cr. L J. 282.

—if an accused person after accepting pardon shows in inclination not to give evidence, he should be examined as a witness and then dealt with under s 339, 31 M 272.

—the deposition before the committing M. of the approver who resiled from his statements in the Sessions Court and was then and there put in the dock and tried with the other accused was not admissible in evidence, because the co-accused had no opportunity to cross-examine. 22 C. 50.

—the prosecution is not bound to put the approver forward as a witness at the Sessions trial if they believe that he would give false evidence 21 M. 321, 20 A. 529, 41 P. R. 1905: 3 Cr. L J. 55. F. B. 33 M. 514: 7 M. L. T. 121, 1910 M. W. N. 5: 10 Cr. L J. 254, or if he has shown by his evidence before the Magistrate's Court that he is an untrustworthy witness. 42 C. 856.

—when an approver gives evidence in a preliminary inquiry keeps the M. can withdraw to examine him in the

sessions trial. 24 M. 321.

—the evidence given by an approver before the committing M. may be used as evidence in proceedings taken against him if he has not satisfied the condition of pardon at the commitment 4 U B. R 7 (Cr. P C.), 1905 P R 41.

—when the committing M. granted pardon to an accused who accepted it and was examined as a witness for the prosecution but his name was not struck off from the category of the accused till the case reached the Sessions Court where the Sessions Judge struck

S. 337. Appear as witness, sub-sec. (2)—contd.

off his name from the list and examined him as witness for the prosecution, held that there being no prejudice to the accused the evidence was admissible. 54 C. 539; 1927 Cal. 680; 103 I. C. 545; 28 Cr. L. J. 689.

—a co-accused discharged under s. 494 (a) instead of pardon being tendered under s. 337 is a competent witness against his co-accused. 95 I. C. 471. 1926 Nag. 426; 27 Cr. L. J. 807.

S. 338. Power to direct tender of pardon.

—the S. J. cannot tender a pardon under this sec. when the offence for which he has been committed is not triable exclusively by the Court of Sessions. 10 C. 936, 25 M. 61 P. C.

—the C. M. must obey the direction of the S. J. 6 W. R. Cr. 5.

—evidence of the approver is admissible though the evidence of the pardoned accomplice, taken with the statement of unpardoned co-prisoners is not sufficient by itself to convict those who never confessed. 7 A. 160.

—the word "supposed" is intended to mean not actually convicted although admitted to be party to the crime. *above case* and Rat. Un Cr. 750.

—the Local Government cannot tender pardon. 33 C. 1353, 10 C. W. N. 847; 4 Cr. L. J. 44

—pardon can be tendered to an "accused." 9 S. L. R. 43.

—it is extremely improper to grant pardon at a later stage of the trial just before judgment. 1884 A. W. N. 147.

S. 339. Commitment of person to whom pardon has been tendered.**Forfeiture.**

—the word "forfeited" has been submitted for the word "withdrawn". 32 M. 173, 15 M. 352, so a pardon can be forfeited and not withdrawn. 31 P. R. 1904, 50 P. R. 1905; 3 Cr. L. J. 342.

—the approver commits a breach of condition if he fails to make a full and true disclosure throughout, both before the C. M. as well as the S. J. 24 M. 321, 32 M. 173.

—where in giving evidence material discrepancies are introduced into the evidence with the intention of benefiting the accused, there is a forfeiture of the pardon by giving false evidence. 91 I. C. 253; 27 Cr. L. J. 77.

—the mere failure of the evidence of the approver to procure conviction of his alleged associates in crime is insufficient in itself to justify a summary order for the withdrawal of the pardon and the trial of the deponent. 15 P. R. 1895.

—the question is whether the accused has forfeited his pardon by some act of his own and not whether the M. has validly withdrawn it. 25 B. 675.

—the H. C. or the court of Sessions is to determine whether the pardon has been forfeited. 25 B. 675.

—the S. J. may take a special verdict of the jury in the first instance as to whether the pardon has been forfeited, and the

S. 339. Forfeiture—*confd.*

question must form an issue in the trial, 19 C. W. N. 295, 42 C. 557; 16 Cr. L. J. 65, 39 B. 511, 32 M. 173, and a conviction without the determination of such issue is illegal, 32 M. 173, 59 P. R. 1903; 43 P. L. R. 1906; 3 Cr. L. J. 342, 31 P. R. 1904 (*the new amendment has made the point clear*).

—it is open to the pardoned accomplice to plead in bar of his trial that he did comply with the conditions of pardon, and the plea must be gone into, 30 B. 611, 8 Bom. L. R. 740; 4 Cr. L. J. 346.

—the substitution of the word "forfeit" in s. 339 for the word "withdrawn" makes it unnecessary for a M. to withdraw or cancel the pardon before trying the approver. The S. J. is to decide whether the pardon has been forfeited, and this can only be done after the termination of the trial, 23 Cr. L. J. 611, 68 I. C. 835.

—no formal declaration that the pardon has been forfeited and formal withdrawal of the pardon are necessary, 42 C. 856, 42 C. 756, 39 A. 305, 32 M. 173, 30 B. 611, 1918 P. R. 24, 7 N. L. R. 65, the forfeiture is *ipso facto* incurred, 37 C. 845.

How the approver is to be dealt with.

—it is open to an accused who has accepted pardon to resile from it and claim to be tried. If he does it before he is treated as an approver and put into the witness box, there is no illegality in his being tried along with the other accused, 33 M. L. T. 77, 1923 M. W. N. 697, 45 M. L. J. 613.

—confession made by an approver under a promise of pardon but with respect to different offence is admissible in evidence against him, 46 A. 236, 22 A. L. J. 85; 81 I. C. 604 F. B.

—when the person to whom pardon has been tendered expresses complete ignorance and states that he was indifferent whether pardon was granted to him or not, he did not accept the tender of pardon, 1924 All. 564.

—an approver forfeiting pardon should be tried *de novo* after the trial of the principal accused has been finished, 23 B. 493, 24 M. 321, 4 Bom. L. R. 826, 4 U. B. R. 7; 7 Cr. L. J. 245 *contra*, 20 A. 529, 29 A. 24, 1908 A. W. N. 259, 5 A. L. J. 691.

—the M. should not commit the approver along with the principal accused, 31 M. 272.

—sanction of the H. C. is necessary for the prosecution in regard to the statement made under conditional pardon, 10 B. 190, 11 B. H. C. R. 34, and the want of sanction is a fatal irregularity, 27 C. 137, 42 P. R. 1884.

—sanction to prosecute for perjury ought to be refused unless it appears that a conviction for the original is unlikely or a prosecution for it is undesirable for any other reason or that on a conviction for the original offence the sentence that could be passed would be too light to cover both offences, 103 I. C. 101; 28 Cr. L. J. 645; 1927 Nag. 189.

S. 339. How the approver is to be dealt with—contd.

the sanction for prosecution to prosecute an approver for in the H. C. on behalf of the : M. 47, 10 P. R. 1904, 1893 A.

—sanction cannot be given unless the Public Prosecutor certifies that in his opinion the person who has accepted such tender has either by wilfully concealing anything essential or by giving false evidence not complied with the conditions on which the pardon was tendered. 1929 Oudh 527 : 1929 Cr. C. 625

—the certificate of the Public Prosecutor is a condition precedent to the prosecution of approver who has failed to comply with the condition of the tender 26 Bom. L. R. 1240 : 7 Bom. Cr. C. 246, 25 Cr. L. J. 1355 : 82 I. C. 715, 1925 Lah. 15, see contra below.

—the absence of a Public Prosecutor's certificate under s. 339 Cr. P. C. is not necessarily a fatal defect. 3 Rang. 55 : 4 Bur. L. J. 23 contra. 26 Bom. L. R. 1240 : 7 Bom. Cr. C. 246, 82 I. C. 715 : 1925 Lah. 15.

S. 339 A. Procedure in trial of person under sec. 339.

This sec. is new, setting out the procedure in cases in which a person who has been granted pardon is tried under s. 339.

—the certificate of the public prosecutor is a condition precedent to the prosecution of the approver. 26 Bom. L. R. 1240, 82 I. C. 715 : 25 Cr. L. J. 1355, 1925 Lah. 15

—the words "the statement made by a person who has accepted the tender of pardon" in sub-sec. (2) are wide enough to cover a statement made by the approver before the pardoning Magistrate. But he must be asked if he has any explanation to offer. 82 I. C. 715 : 25 Cr. L. J. 1355.

—the provisions of this sec. are compulsory and the approver cannot be properly tried and convicted of the offence of murder until the Court trying him records a finding that he has forfeited the pardon. 1929 Oudh 256 : 116 I. C. 61 : 30 Cr. L. J. 559.

—the question of forfeiture should be left to the jury. 33 M. 514.

—before an approver is put on his trial, it is the duty of the trying court to decide first whether there has been a forfeiture. 30 B. 611, 42 C. 856, 32 M. 173, 11 N. L. R. 59, 7 L. B. R. 1, 1902 P. R. 34.

—complying with the terms of pardon in examination-in-chief and making admission in cross examination but returning towards previous statement in re-examination, do not constitute forfeiture. 95 I. C. 288 : 27 Cr. L. J. 768 : 3 O. W. N. 474.

S. 340. Right of accused to be defended.

the sec. has been made
sec. runs thus, (1) any
Court, or against whom
any such court, may of
person against whom pro-

S. 340. Right of accused to be defended—contd.

proceedings are instituted in any such court under s. 107 or under Ch. X, Chapter XI Chapter XII or Chapter XXXI or under sec. 552, may offer himself as a witness in such proceedings.

—an accused should always be given time to engage a pleader in such cases the proper procedure is to examine the prosecution witnesses in chief and then adjourn the case giving the accused time to engage a pleader and instruct him. 47 A. 147. 85 I. C. 719

—a suspect is as much, if not more, entitled as any other person accused of a substantive offence to have a reasonable opportunity afforded to him of defending himself 96 I. C. 391; 1936 Sind 288; 27 Cr. L. J. 935.

—the right to defend extends to the case of any person against whom proceedings are instituted under the Code in any Court. This section contemplates that the accused should not only be at liberty to be defended by a pleader at the time the proceedings are actually going on but also implies that he should have reasonable opportunity if in custody of getting into communication with his legal adviser for the purpose of preparing his defence 50 B. 741 97 I. C. 801; 1926 Bom. 551; 23 Bom. L. R. 1043.

—an accused should always be given time to engage a pleader and the procedure is to examine prosecution witness in chief and then adjourn the case giving the accused time to engage a pleader and instruct him 47 A. 147; 85 I. C. 719 1925 All 285

—it is the duty of the M. to afford the accused and his friends every opportunity of making his defence, and he should not personally interpose in any way between them. 1 Bom. L. R. 656.

—the prisoners should have the fullest opportunity for giving *Vakalatnamas* to whomsoever they please 1 B. 11 C. R. Cr. 16.

—a pleader is entitled to appear on behalf of the accused as well as on behalf of the private prosecutor 5 B. L. R. Ap. 70.

—admissions made by the pleader appointed by the court to defend are not binding on the accused 2 Bom. L. R. 751.

—to allow the *mukhtar* to appear on behalf of the accused is discretionary with the court Rat. Un. Cr. 314

—the conviction will be set aside if the accused's *vakil* is not heard. 5 M. L. T. 290. 9 Cr. L. J. 305, 9 P. R. 1877, 15 P. R. 1900

—no advocate or attorney of the H. C. or the authorised pleader appearing in defence of an accused should be required to file a *vakalatnama*. 7 M. H. C. R. Ap. 40

—communication made to a *mukhtar* or his clerk is privileged under s. 126 Ev. Act. 25 C. 736.

—it is the duty of the pleader for the accused to call witnesses for the defence if his client insists on submitting their evidence to the court 3 Bom. L. R. 562.

—“persons accused” means any person over whom a M. or other criminal court is exercising jurisdiction, so a person ordered to give security for good behaviour is an accused person. 16 B. 661,

S. 340. Right of accused to be defended—contd.

23 C 493, 21 A. 107, 25 A. 375, 27 C. 665, *Contra.* 27 C. 662, 9 C. W. N. 983.

—a Prosecuting Inspector can be appointed by the accused with the permission of the court to defend him but the M. should record the statement of the accused making such appointment. 1930 Nag 150 : 1930 Cr. C. 506 : 122 I. C. 442.

S. 341. Procedure where accused does not understand proceedings.

—sec 341 does not apply where it is shown that the accused understood the proceedings 3 Bom. L. R. 371, 22 W. R. Cr. 35, 72, 19 W R Cr 37.

—if the accused understands the character of his criminal act, he is liable to punishment. 40 B 598 : 18 Cr. L. J. 143.

—to apply the sec. the M. must proceed to the end of the trial and if there is no commitment or conviction there will be no reference Rat. Un Cr 180, 836, 879, 2 Weir 403, 4 Bom. L. R. 825, 27 C. 368 : 4 C W. N. 421, 13 P. R. 1911 Cr. : 12 Cr. L. J. 613 : 13 Ind C 989.

—this sec applies to persons who are unable to understand the proceedings from deafness or dumbness, or ignorance of the language of the country, or other similar cause. Rat Un. Cr. 151.

—when deaf and dumb persons are on trial, some means of communication, if possible, should be attempted. 2 Weir 403, 6 M. H. C. R. Ap. 7.

—no sentence should be passed in doubtful case. 2 Weir 403.

—a deaf-mute should not be tried summarily. The Magistrate should make inquiries about his antecedents and ordinary mode of life as been communicated with in the R 849 : 4 Cr. L. J. 444.

—341 the M. should hold an enquiry if the accused was a lunatic either at the time of the trial or at the time of commission of the alleged offence. 11 M. L. T 24 : 13 Ind. C 216 : 13 Cr. L. J. 24.

—In modern practice, want of speech and hearing does not imply want of capacity either in the understanding or memory, but only a difficulty in the means of communicating knowledge. This sec. gives the H. C. full discretion to do whatever the circumstances of the particular case require U B. R 1910 4th Qr. P. 57 : 11 Ind. C 250 : 12 Cr L. J. 386, 4 Bur L. T 150.

—the fact of an accused being deaf and dumb is not *per se* sufficient to justify a reference under this sec., the fact that he could not be made to understand them should appear on the record. 9 C. P. L. R. 38 Cr., 10 Lah 566 : 30 Punj. L. R. 609 : 1929 Lah. 840 : 112 I. C. 688 : 29 Cr. L. J. 1104.

—when the accused is deaf and dumb but understands the proceedings, 341 does not apply. 1927 Lah. 799 : 103 I. C. 112 : 28 Cr. L. J. 656.

—but before convicting an accused who is deaf and dumb and submitting his case to the H. C. it is essential for the M. to

S. 341. Procedure where accused does not understand proceedings—*contd*

record that the accused had sufficient intelligence to understand the criminal character of his act or that he could understand the purpose and nature of the judicial proceeding 118 I. C. 612 30 Cr L. J. 918 : 30 Panj L. R. 597

—where a deaf and dumb accused was found guilty of attempt to commit suicide and at the trial he made certain signs indicating his guilt the H C affirmed the conviction and sentenced him to a day's simple imprisonment 25 Bom L. R. 43

S. 342. Power to examine the accused.

Object of the section

—the object of this sec is to enable the accused to explain any circumstance appearing against him and not to supplement the prosecution case. 50 C 223, 10 M 295, 30 A 540 : 1908 A W N. 241 81 I C. 150 : 25 Cr L. J. 662, 51 A. 313 113 I C. 213 : 30 Cr L. J. 101 : 1929 All. 1 26 A L. J. 1334, 81 I C. 249, 77 I C. 602, 9 M. 224, or to fill up the gap in the evidence for the prosecution 27 M. 238, 26 C. 49 : 3 C W N 36, 28 C 689 5 C W N 670. 8 Cr L. J. 62 : 4 L. B. R. 244, 1929 Cr. C 653 1929 Sied 255, or to endeavour to elicit information in regard to statements made by a witness 7 C W N 345, or to obtain from the accused some explanation in regard to the matter which he had previously mentioned in his confession and already repudiated as untrue 7 C W. N. 345

—the language of the sec is very wide. The court is to come to conclusion after considering the evidence on both sides and also the statement of the accused as a whole The court cannot supplement the prosecution evidence by selecting out of the statement of the accused. 51 A. 313 : 1929 All 1 : 26 A L. J. 1334 : 113 I C. 213 30 Cr L. J. 101

—the court should not put question in order merely to convict the accused out of his own mouth 10 M. 121 or to subject the accused to a very embarrassing and cruel series of questions intended apparently rather to puzzle the accused than to elucidate the case. 6 Bom. L. R. 94, 5 C. W. N. 84, 13 A. 345, 10 C 140 13 C. L. R. 358, 4 L. B. R. 244 : 8 Cr L. J. 82 or to know his defence, 14 A. 242, 13 A 345, 5 C. W. N. 864, 7 C. W. N 345, 27 M 278 *but see below*

—it is competent to the court under s 342 to cross-examine the accused and to put question with the object of trapping him into some sort of admission after he has resiled from his confession. 2 L. 129, 67 I C 340.

—it is improper to supply the want of proof of previous convictions by examining the accused himself. 28 C 639 5 C. W. N. 670, 28 B 129 : 5 Bom. L. R. 805

—this sec. is not intended merely for the benefit of the accused. It is part of a system for leading the court to discover the truth : and it constantly happens that the accused's explanation or his failure to explain is the most incriminating circumstance against him. 4 N. L. R. 163, 29 C. W. N. 231 : 41 C. L. J. 101 : 52 C. 522 : 85 I. C 919 : 1925 Cal. 361.

S. 342. Application of the section—contd.*Whether the section applies to summons cases.*

—this section is to be complied with in summons cases also, 54 C 286 1927 Cal 250: 26 C. L. J. 297 100 I C. 377 45 C L. J. 8, 22 N. L. R. 63, 27 Cr L J 632 1926 Nag 300: 93 I C 69 1926 All. 358: 27 Cr L J 405, 20 S. L. R. 34, 1926 Sind 1, 46 M 758 F. B.

—even in a summary trial the M is bound to examine the accused under this section 8 Pat. L. T 757, 1927 Pat 369 6 Pat. 504, but in summary trial under s 364 questions and answers in detail should not be taken down *Same case.*

—under this sec. M. is bound in a summons case to examine the accused before convicting him 4 B 627

—the provisions of sec. 342 (1) requiring to question the accused are inapplicable to the summary trials of summons cases as well as to summons cases tried in an ordinary manner, 46 M, 766 45 M L. J 330 1923 M W N 893 74 I C 939 F. B.

—the provisions of this sec requiring the court to question the accused generally on the case or to enable him to explain the circumstances appearing against him on the evidence do not apply to summons cases 46 M 758 74 I C 845 45 M L J 294 *contra*, 49 C. 1075: 71 I C 51 24 Cr L J 3

—this section does not apply to a summons case and consequently the M is not bound in such a case to question the accused generally after the close of the prosecution case and before he enters on his defence, 101 I C. 608 9 Lah L J. 109, 1927 Lah. 268: 28 Cr L J 480, 101 I C 606, 1927 Lah 435, 28 Cr. L J, 478

Sub.sec. (1) Manner of examination of the accused.**How the examination shall be conducted.**

—the accused should not be driven to make self-incriminating statements, 1 M. H C R. 199, 2 C. W N 700, 8 C W. N 22, 6 C. 279 7 C L R. 384, 6 C L R. 431 16 W. R Cr. 21, 8 W. R Cr. 47 F. B., 25 W R Cr 57, 10 M. 121, 13 A 345, 30 A. 540, 1884 A W. N. 106, 110 I C 801 29 Cr L J. 769: 10 Lah 223, 30 Punj L R. 285, 1929 Lah 382.

—the accused should not be cross-examined after the manner of the cross-examination of an adverse witness by the counsel, 6 C. 96: 6 C. L R. 521

—when the accused is an ignorant person, attention should be drawn to the vital parts of the case 20 Cr L J 12

—where the accused is defended by a legal practitioner an elaborate examination is unnecessary, 3 Pat L. T. 649 66 I C. 73: 23 Cr L. J. 223

—“examination” in s 342 Cr. P. C means examination, cross-examination and re-examination of the witness for the prosecution and where the accused is not questioned thereafter the conviction is bad 27 C W. N. 28 1 Pat L. R Cr 29: 72 I. C. 891, 27 C W. N. 389, 50 C. 518: 71 I. C 792, 50 C 939: 27 C. W. N. 743, 50 C. 308 *Contra*, 46 M. 449. 44 M, L J. 567: 73 I C. 163 F. B., 115

S. 342. Sub-sec. (1). How the examination shall be conducted—contd.

I. C. 872 : 30 Cr. L. J. 530 : 26 A. L. J. 196 : 1928 All. 222, but see 56 C. 1157 : 1930 C. 219 : 31 Cr. L. J. 406 : 122 I. C. 291.

—it is left entirely to the discretion of the courts, whether or not, in the course of the examination, ask specific questions. Bom. L. R. 109 : 81 I. C.

—the examination of the accused should not be of an inquisitorial nature. 41 C. L. J. 101. 29 C. W. N. 231.

—if an accused person prefers to be reticent the court should not hold an inquisitorial proceeding. But where the questions were merely intended to clear up the case and the accused did not answer all questions without damage the procedure was not illegal. 50 C. L. J. 593 : 1930 Cr. C. 209 : 1930 C. 209.

—under s 164 the enquiring M. is to record only the voluntary statement but under this sec. the M. can examine the accused, 5 C. W. N. 864

—where the Judge after taking an explanation from the accused as regards the nature of his defence compared it with that of his co-accused and subsequently took another statement from the co-accused, the procedure was not bad 55 C. 858. 32 C. W. N. 319. 1928 Cal 675.

When the examination shall take place.

—the examination of the accused must take place at the close of the prosecution case and before the accused have entered on their defence 51 C. 933, 84 I. C. 325 26 Cr. L. J. 261 : 1925 Cal 480, 1922 P. 299, 6 Pat. L. J. 644, 49 C. 1075. 71 I. C. 51.

—the stage in the trial prescribed by s 342 Cr. P. C. for questioning the accused generally in the case is after the prosecution evidence is complete and before he is called upon to enter on his defence. 27 Bom. L. R. 105 : 86 I. C. 66 : 26 Cr. L. J. 690.

—the examination must be made before defence commences. Rat. Un. Cr. 227, 6 Lab. L. J. 618 : 1925 Lab 288.

—the word "examination" includes cross-examination and re-examination. Where the accused is examined by the prosecution and then cross-examined by the defence, the examination is complete. The accused cannot claim a further right to be examined. 50 C. 1157 : 1930 C. 219 : 122 I. C. 291 : 31 Cr. L. J. 406.

—"examination" does not mean examination in chief of the witnesses but it includes cross-examination and re-examination of the witnesses. Where, however, the M. failed to question the accused after this cross-examination and re-examination of the prosecution witnesses but no prejudice was caused to the accused, the irregularity was curable under s. 537 Cr. P. C., 26 A. L. J. 196 : 115 I. C. 872 : 30 Cr. L. J. 530 : 1928 All. 222.

S. 342. Sub-sec. (1). When the examination shall take place—*contd.*

—examination of the accused after examining only some of the prosecution witnesses is not illegal if the accused is not prejudiced thereby 1928 Lah. 381, 30 Cr. L. J. 18 112 I. C. 850

—taking prosecution evidence after framing charge and examination of accused is illegal. 84 I. C. 545; 1925 Rang. 101, 2 C. W. N. 378

—but where subsequent to the framing of the charge some more prosecution witnesses are examined the accused must be further questioned 29 Cr. L. J. 382 103 I. C. 381, 10 A. I. Cr. R. 26.

—the accused should not be examined when the evidence for the prosecution does not disclose any proper subject of criminal charge. 10 W. R. Cr. 25 I. B. L. R. 16, 39 M. 770

—when the judge took an explanation from the accused as regards the nature of his defence and compared it with that of his co-accused and subsequently took another statement under s. 342, held that he was entitled to do so 32 C. W. N. 319 55 C. 858.

Procedure in de novo trial by successor of Magistrate.

—the successor of a M. trying *de novo* must comply with the section as he tries the case in the sense of "decides" 1927 Lah. 720, 106 I. C. 717; 29 Cr. L. J. 125.

Whether the section is imperative.

—the sec is imperative, so where the accused was not examined the conviction was set aside. 29 C. W. N. 939; 87 I. C. 920 26 Cr. L. J. 1032, 27 C. W. N. 99, 46 M. 449; 44 M. L. J. 567; 73 I. C. 163, F. B. 50 C. 403; 41 C. L. J. 50, 4 Pat. 438; 86 I. C. 991; 26 Cr. L. J. 927, 36 C. L. J. 417, 3 Pat. L. T. 322; 65 I. C. 546; 25 Cr. L. J. 81 I. C. 796, 1924 Lah. 734, 6 Pat. L. T. 445 81 I. C. 198; 5 Pat. L. J. 430; 6 Pat. L. J. 147, 3 Pat. L. T. 347; 67 I. C. 616, 1922 Pat. 212, 45 B. 672, 15 C. W. N. 61 (note), Rat. Un. Cr. 100, 700, 10 Bom. L. R. 201; 7 Cr. L. J. 104, 22 C. 252, 1926 Cal. 430, 86 I. C. 991; 1925 Pat. 723, 86 I. C. 991, 96 I. C. 86; 1926 Lah. 687, 96 I. C. 879; 1926 Lah. 653, 111 I. C. 665 29 Cr. L. J. 905; 1928 Lah. 230, 1926 Lah. 551, I. P. R. 1918, 1921 Bom. 374, 1928 Lah. 382; 30 Cr. L. J. 18; 112 I. C. 850, 33 C. W. N. 947, and it applies to summary trials also; 33 C. W. N. 947, but there may be waiver on the part of accused. 2 Weir 405, 4 L. B. R. 143, 7 Cr. L. J. 422,

—omission to examine the accused at the close of the prosecution case is an irregularity *curehla* under s. 537 Cr. C. P. 31 C. W. N. 337; 100 I. C. 827 1927 Cal. 330; 45 C. L. J. 591; 28 Cr. L. J. 347, 93 I. C. 69; 1926 All. 358, 10 Pat. L. T. 196, *contra*, the section is mandatory and the court cannot be condoned by the case. L. J. 417, 108 I. C. 381; 29 Cr. O. 123; 1928 Nag. 162; 29 Cr. L. 196.

—omission to examine the accused after recording further prosecution evidence amounts to an illegality which vitiates the

S. 342. Sub-sec. (1). Whether the section is imperative
—contd.

trial. 96 I C. 879. 27 Cr L. J. 1023; 1926 Lab. 653. 30 Bom L. R. 385; 109 I C. 359. 29 Cr L. J. 535, 1928 Bom. 140 (50 C. 939, 27 Bom. L. R. 1405. 46 M. 449) *Ref.*, 106 I. C. 347; 29 Cr L. J. 11; 1927 Lab. 916.

—but where the additional evidence does not really disclose any fresh facts or does not affect the decision of the case the accused is in no way prejudiced by not having an opportunity to tender a further explanation. 111 I C 852; 1929 Sind 5; 23 S L. R. 1,7 Rang 470; 1929 Rang. 331.

—there is no provision requiring the accused to be again examined after the examination of a witness under s. 540 Cr. P. C. and if the court does not examine the accused the proceeding is not vitiated. 1928 Bom. 383; 30 Bom. L. R. 1086; 112 I. C. 561; 29 Cr. L. J. 1057.

—where the witnesses had already been cross-examined in detail before the charge and no fresh prosecution witnesses were examined after charge the accused need not be examined again after the further cross-examination of the witnesses for the prosecution recalled. 1929 Lab 371. 116 I. C. 455. 30 Cr. L. J. 625, (1924 Lab. 84, 1926 Lab. 154, 1923 M. 609 F B) *fol.*, 1926 Lab. 551: *Expl. and Dist.*

—the sec. does not apply to evidence taken under s. 428 Cr. P. C. where the court in regard to the accused is not required to examine him. 112 I. C. 60;

1926 Bom 200

—a statement made by the accused at an early stage of the trial does not dispense with a strict observance of the provisions of this section to question him at the close of the trial. 37 C. L. J. 413; 28 C. W. N. 118. 75 I. C. 367. 24 Cr L. J. 943; 1925 Cal 574

—there is difference in language between the first and second portion of sec. 342, the former being discretionary and the latter mandatory. It depends on the circumstances of each case what must be the nature of the question put by the court but it would be a sufficient compliance if the court gives the accused an opportunity by questioning him generally to explain the circumstances appearing against him. 6 Pat. L. T. 588; 26 Cr. L. J. 914; 87 I. C. 106.

—the accused person has a right to be examined and to state his case after the further cross-examination of prosecution witnesses, even though he had already been examined before the charge was framed and had been called upon for his defence. This is a fundamental rule and the omission of it vitiates the conviction, 4 Bur. L. J. 143. 45 M. 820, 49 C. 1075. 51 C. 924 *fol.*

—although the failure on the part of the M. to comply strictly with the provision of this section vitiates the trial it is not incumbent on the H. C., in revision, to set aside the conviction specially where no prejudice is shown to have been caused by such illegality. 95 I. C. 55; 1926 Lab. 553; 27 Punj. L. R. 183; 27 Cr. L. J. 727.

S. 342. Sub-sec. (1). What is sufficient compliance with the section.

—where the examination was not recorded but indication was found in the order-sheet, held that a 312 was mandatory, so the trial was vitiated. 52 C. 403. 41 C. L. J. 53: 85 I. C. 345. 1925 Cal. 575: 26 Cr. L. J. 761.

—the provisions of a 342 Cr. P. C. are not sufficiently complied with by examining the accused person after prosecution witnesses have been examined in chief but before they have been cross-examined. 27 C. W. N. 743, 9 M. 224, 5 M. L. T. 216, 1893 A. W. N. 238.

—examination of the accused after the examination of some of the prosecution witnesses but not at the close of the prosecution evidence with the Magistrate's note that the accused does not wish to add to his previous statement is not a sufficient compliance with the section. 96 I. C. 877. 1926 Lah. 631, 27 Cr. L. J. 1021, 91 I. C. 391. 1925 Lah. 243. 27 Cr. L. J. 87, 92 I. C. 751. 1925 Rang. 363.

—where the accused was questioned by the M. before all the witnesses for the prosecution had been examined, cross-examined and re-examined, the conviction was set aside and the case remanded for re-trial. 27 C. W. N. 25.

—where the statements of the accused were recorded separately before the charge but subsequent to the re-cross of the prosecution witnesses joint statements of the accused were recorded, the trial was bad. 103 I. C. 117. 29 Punj. L. R. 436: 29 Cr. L. J. 469: 10 Lah. L. J. 305.

—the proper method is to bring to the attention of the accused the evidence against them. Merely to say "you have anything to say" is not sufficient. The committing M. is not bound to put the evidence against them before the accused. 27 C. W. N. 25.

—where personal attendance of the accused is dispensed with under s. 205, his pleader may make statement under s. 342 on his behalf and his personal attendance should not be insisted upon. 1927 Rang. 71. 99 I. C. 1026. 28 Cr. L. J. 226.

—a formal question in general terms such as "what is your defence" giving the accused an opportunity of making a statement of his defence with his own lips is a sufficient compliance with the mandatory provision of this sec. 52 C. 523: 41 C. L. J. 101: 29 C. W. N. 231, 26 Bom. L. R. 109. 81 I. C. 951, 90 I. C. 294. 26 Cr. L. J. 1510 (C).

—general questions about the case after the witnesses for the prosecution have been examined are sufficient. 100 I. C. 991: 1927 Mad. 613. 28 Cr. L. J. 383.

—it is not sufficient compliance with the sec. to put general questions like "have you anything more to say" or "you have heard the evidence, what have you to say?" 29 Cr. L. J. 12. 85 I. C. 716: 1925 Cal. 980: 20 Cr. L. J. 572.

S. 342. Sub-sec. (1). What is sufficient compliance with the section—*contd.*

—where the accused were asked if they had any statement to make and they replied "no" and there was nothing which the accused wished to say which had not been recorded, there was sufficient compliance with the sec. 6 Pat. L. T. 39 : 3 Pat. L. R. 25 : 86 I. C. 58 : 1925 Pat. 389.

—a formal question in general terms is sufficient compliance with the section 91 I. C. 997 : 27 Cr. L. J. 181.

Whether written statement is sufficient.

—the filing of written statement cannot take the place of the examination contemplated by this sec ; the court is to put question on the points appearing against the accused 6 Pat. L. T. 73 : 1925 Pat. 378 : 26 Cr. L. J. 933 : 86 I. C. 996, 109 I. C. 123 : 29 Cr. L. J. 675 1928 Nag. 162.

—the filing of written statement, at the time of plea, in no way exonerates or exempts the court from examining the accused under this sec. 50 C. 518 : 27 C. W. N. 389 : 71 I. C. 792, nor does the discussion with the counsel for the defence. *same case.*

—the filing of a written statement cannot take the place of examination of the accused contemplated by this sec. Where however the accused, on being asked whether he would make a statement replied "no, I shall file a written statement" and the statement filed covered all the points raised by the prosecution there was sufficient compliance with the provisions of the sec. 4 Pat. 231 : 6 Pat. L. T. 73 : 86 I. C. 996, 6 Pat. L. T. 154 : 86 I. C. 459, and the law does not require that after a remand for taking additional evidence the accused should again be examined 6 Pat. L. T. 154 : 86 I. C. 459.

—taking of a written statement from the accused instead of examining him is illegal and the defect vitiates the trial. 3 Pat. L. T. 322 : 65 I. C. 546 : 23 Cr. L. J. 114.

—there is no provision for putting in written statement in the Sessions Court, such practice is pernicious 19 C. W. N. 1943, 20 C. W. N. 128.

—there is no provision in the Code entitling the accused as a matter of right to put in a written statement in lieu of any answers to questions put to him under s. 342 Cr. P. C., 53 B. 479 : 1929 Cr. C. 114 : 1929 Bom. 296 : 31 Bom. L. R. 545.

Effect of non-compliance with the section.

—where there has been no substantial compliance with the provisions of the sec a retrial should be ordered 38 C. L. J. 175.

—a trial is vitiated by the non-compliance with the provisions of this sec. 50 C. 403 : 41 C. L. J. 59, 4 Pat. L. T. 231 : 72 I. C. 71, 86 I. C. 156 : 1925 Pat. 342 : 26 Cr. L. J. 715, 51 C. 924 : 39 C. L. J. 411, 51 C. 933, 77 I. C. 593 : 1924 Nag. 301, 50 C. 518 : 27 C. W. N.

S. 342. Sub-sec. (1). Effect of non-compliance with the section—contd.

389; 50 C 939; 27 C. W. N. 743, but it is not vitiated if the examination of the accused is insufficient. 41 C. L. J. 101; 29 C. W. N. 231.

—non-compliance with the sec. is an illegality vitiating the trial and it does not matter whether the accused was prejudiced or not. It is obligatory on the court to tell the accused what are the circumstances he has to explain and a mere question whether the accused had anything to say is not sufficient. 6 Pat. L. T. 33; 86 I. C. 156; 26 Cr. L. J. 716; 1928 Lah. 382; 30 Cr. L. J. 18; 112 I. C. 850. It cannot be cured by a. 537 Cr. P. C., 28 C. W. N. 119; 38 C. L. J. 281, 63 I. C. 618; 23 Cr. L. J. 154, 1 P. R. 1918 Cr., 45 B. 672, *Fol. Contra*, Omission to comply with the sec. does not vitiate the trial and conviction in the absence of prejudice to the accused. 20 A. L. J. 874; L. R. 3 A. 168 Cr.; 45 A. 124; 71 I. C. 115, 7 P. L. T. 493, 96 I. C. 873, 1926 Pat. 391, 115 I. C. 872; 30 Cr. L. J. 530; 26 A. L. J. 196; 1928 All. 222, 31 C. W. N. 337; 100 I. C. 827; 1927 Cal. 330; 45 C. L. J. 591; 28 Cr. L. J. 347, 93 I. C. 69, 1926 All. 358, 10 Pat. L. T. 196.

—where the prosecution witnesses are recalled and cross-examined but the accused is not questioned again, the trial is vitiated. 81 I. C. 201; 25 Cr. L. J. 713, 1924 Nag. 51 (45 M. 820, 50 C. 223) *Fol.* 20 N. L. R. 174 F. B., 46 M. 449 F. B. *Diss.* (50 C. 223, 308, 518, 939) *Ref.* 106 I. C. 347; 29 Cr. L. J. 11 *Contra* 81 I. C. 976; 25 Cr. L. J. 1152, 46 M. 449, 44 M. L. J. 567, 1933 M. W. N. 477; 73 I. C. 163 F. B.

—in a preliminary enquiry by a committing M. the non-compliance with the sec. does not vitiate the committal. 83 I. C. 895.

—where in a trial by Presidency M. the record does not contain any examination of the accused under a. 342 Cr. P. C. and no statement of the reason for conviction is recorded the conviction should be set aside. 91 I. C. 542; 1926 Cal. 692; 27 Cr. L. J. 110.

Sub-sec. (2) Liability of the accused.

—an accused person is not bound to state the truth. 81 I. C. 717; 25 Cr. L. J. 1005; 66 L. L. J. 575

made by an accused
considered privileged.
17 All. 707; 25 A. L. J.
Dist

—answers to questions received by the committing M. in contravention of sec. 342 are not admissible in evidence against the accused in the subsequent trial before the S. C., 39 M. 770.

—the immunity conferred by Sub-sec. (2) does not extend to a written statement filed by an accused person. 92 I. C. 429; 1926 All. 287; 27 Cr. L. J. 253, or to an affidavit presented to "

S. 342. Sub-sec. (1). What is sufficient compliance with the section—*contd.*

—where the accused were asked if they had any statement to make and they replied "no" and there was nothing which the accused wished to say which had not been recorded, there was sufficient compliance with the sec. 6 Pat. L. T. 39; 3 Pat. L. R. 25; 86 I. C. 58; 1925 Pat. 389.

—a formal question in general terms is sufficient compliance with the section 91 I. C. 997; 27 Cr. L. J. 181.

Whether written statement is sufficient.

—the filing of written statement cannot take the place of the examination contemplated by this sec., the court is to put question on the points appearing against the accused 6 Pat. L. T. 75; 1925 Pat. 378; 26 Cr. L. J. 943; 86 I. C. 996, 109 I. C. 123; 29 Cr. L. J. 675; 1928 Nag. 162.

—the filing of written statement, at the time of plea, in no way exonerates or exempts the court from examining the accused under this sec., 50 C. 518; 27 C. W. N. 389; 71 I. C. 792, nor does the discussion with the counsel for the defence. *same case.*

—the filing of a written statement cannot take the place of examination of the accused contemplated by this sec. Where however the accused, on being asked whether he would make a statement replied "no, I shall file a written statement" and the statement filed covered all the points raised by the prosecution there was sufficient compliance with the provisions of the sec. 4 Pat. 231; 6 Pat. L. T. 73; 86 I. C. 996, 6 Pat. L. T. 154; 86 I. C. 459, and the law does not require that after a remand for taking additional evidence the accused should again be examined 6 Pat. L. T. 154; 86 I. C. 459.

—taking of a written statement from the accused instead of examining him is illegal and the defect vitiates the trial. 3 Pat. L. T. 322; 65 I. C. 546; 23 Cr. L. J. 114.

—there is no provision for putting in written statement in the Sessions Court, such practice is pernicious. 19 C. W. N. 1943. 20 C. W. N. 128.

—there is no provision in the Code entitling the accused as a matter of right to put in a written statement in lieu of any answers to questions put to him under s. 342 Cr. P. C., 53 B. 479; 1929 Cr. C. 114; 1929 Bom. 296; 31 Bom. L. R. 545.

Effect of non-compliance with the section.

—where there has been no substantial compliance with the provisions of the sec. a retrial should be ordered. 38 C. L. J. 175.

—a trial is vitiated by the non-compliance with the provisions of this sec. 50 C. 403; 41 C. L. J. 50, 4 Pat. L. T. 231; 72 I. C. 71. 86 I. C. 156; 1925 Pat. 342; 26 Cr. L. J. 716, 51 C. 924; 39 C. L. J. 411, 51 C. 933, 77 I. C. 593; 1924 Nag. 301, 50 C. 518; 27 C. W. N.

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—statements of a defamatory character made by an accused person in the course of the statement must be considered privileged. 50 A. 169: 107 I. C. 561: 29 Cr. L. J. 262, 1927 All. 707: 25 A. L. J. 855, 5 M. L. T. 256: 9 Cr. L. J. 276, 15 M. 414. *Dist*

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Sec. 344. Adjournment—contd.

—application for postponement of case pending the decision of the Civil Court should be made to the trying court first and then to the H. C. 18 L. W. 236: 73 I. C. 528: 24 Cr. L. J. 640.

—the M. should take some evidence before granting adjournment at the instance of the prosecution. 49 C. 182.

—the court may adjourn the case on the ground that the examination of a witness not already examined before the committing M. will be a surprise to the accused. 1 P. R. Cr. 1889.

—a M. is not justified in taking the extreme course of deciding without hearing the defence when the accused's advocate has an engagement at another place. 12 Cr. L. J. 474: 12 Ind. C. 82.

—an appeal pending against the conviction of the accused in a case is a good ground for adjourning the trial of the same accused in a subsequent trial. 6 M. L. T. 90: 9 Cr. L. J. 495.

—an application under s. 344 is an application to postpone the commencement of the inquiry and is not commencement of the inquiry. 24 P. L. R. 1904: 1 Cr. L. J. 109, 15 C. 455.

—the court must be the same court as it was constituted before the adjournment; the consent of the party will not prevent the necessity for a fresh trial. 23 W. R. Cr. 59.

—case should be adjourned for the purpose of allowing the accused to secure the attendance of his witness, 16 W. N. Cr. 21, 5 M. H. C. R. Ap. 27, 19 M. 375, 12 C. L. R. 120, even if the witnesses were not certified in the Attendance Register of the Nazir. 7 C. W. N. 714.

—it is not a power to be exercised arbitrarily or not according to law. 9 B. L. R. 354: 17 W. R. Cr. 55.

Stay of criminal proceeding pending civil proceeding.

—ordinarily the subsequent institution of a civil suit is not a stay of criminal trial in a proper case. 55 I. 8 P. W. R. 1916: 17 Cr. 13 Cr. L. J. 175: 13 I. C. 44.

—it is ordinarily undesirable to institute criminal proceedings until the determination of the civil proceedings in which the same issues are involved; criminal proceedings lend themselves to the unscrupulous application of improper pressure with a view to influencing the course of the civil proceedings. 24 C. W. N. 418: 21 Cr. L. J. 481, 89 I. C. 1053: 1926 All. 30: 26 Cr. L. J. 1485.

—when proceedings both criminal and civil are instituted on the same matter the Criminal Court is bound to stay proceedings.

will was stayed by the (note).

S. 344. Stay of criminal proceedings pending civil proceedings—contd.

—proceedings against the appellant under ss. 193 and 269 were stayed by the H. C. pending the hearing of the appeal. 20 C. W. N. 1116.

—on an application under s. 185 Cr. P. C. proceedings in the case were stayed for two months to enable accused to institute a civil suit. 17 C. W. N. 761.

—proceedings under sec. 476 by the Civil Court may be stayed by the H. C. 43 All. 180.

—in case of question at issue in the criminal proceeding which is sub-judice in the civil court the criminal proceeding should be stayed. 43 A. 180; 21 P. W. R. 1912; 13 I. C. 927; 13 Cr. L. J. 175, 5 C. L. J. 233, 5 C. W. N. 44.

—it would be a dangerous doctrine to lay down any hard and fast rule to the effect that a criminal trial or enquiry should of necessity be stayed simply because a civil suit has been instituted between the parties in which some or all the matters materially in issue in the criminal case would have to be determined, until the civil litigation was finally decided. 13 C. W. N. 398, 34 C. 848; 11 C. W. N. 712 *Expt.*

—when the questions are different though they arise out of the same transaction and are intimately connected with each other, it is not expedient to stay a criminal trial. 69 I. C. 380; 23 Cr. L. J. 700.

—where a M. refused to stay proceedings against the applicant taken under s. 193 I. P. C. pending the disposal of an appeal pre-suit during the trial of which
 made certain false statement.
 not be set aside in revision. 8 S. 989.

—the defendant in a civil suit ought not to be allowed to prejudice the trial of such suit by launching a proceeding with a criminal prosecution on the same facts against the plaintiff and his witnesses and such proceedings if launched, will be stayed by the H. C. in the exercise of its powers of superintendence. 30 M. 226.

—the trial of a criminal charge of forgery should be adjourned pending the determination of a civil suit regarding the same document. A. W. N. 1887, 102.

—the H. C. will not order stay of criminal proceedings in a complaint respecting the offences of perjury, making and using a false document, and making a false complaint to M. pending the disposal of a civil appeal out of which the criminal proceedings arose. 26 B. 785; 4 Bom. L. R. 618.

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—ordinarily the subsequent institution of a civil suit is not a good cause for a stay of criminal proceeding, but as it is well to avoid conflicting decisions as far as possible a stay of criminal trial till the disposal of the civil suit may be ordered in a proper case. 55 L. R 123, 8 P. W. R. 1916; 17 Cr. L. 1912; 13 Cr. L. J. 175; 13 I. C. C. W N. 44.

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—it is proper to stay criminal proceedings against the accused charged with cheating pending decision of civil suit. 38 P. L. R. 1922; 4 L. L. J. 401; 68 I. C. 819; 23 Cr. L. J. 595

—where a will was found to be a forgery in a probate case before the Dt. J. at whose direction criminal proceedings were started by the M. the H. C. on appeal refused to stay the criminal proceed-

S. 344. Stay of criminal proceeding pending civil proceeding—*contd.*

ings 31 C. 85 : 1 Cr. L. J. 852, *contra.*, 30 M. 226, 14 C. W. N. 131 (note), 10 C. W. N. 154 (note) 211 (note)

—the H. C. directed the stay of a prosecution on the charge of forgery during the pendency of a civil suit in which the genuineness of a document would be a material issue. 12 C. L. J. 270 : 38 C. 106 : 11 Cr. L. J. 448 7 Ind. C. 317.

—where one party appealed to the Registrar and filled a suit to compel registration of a document while the other party rushed into the criminal court with a charge of forgery it was a fit case in which criminal proceedings ought to be stayed until the disposal of the civil suit. In all such cases the test is whether the accused would be prejudiced if the criminal proceedings are not stayed until the disposal of the civil suit. 16 Cr. L. J. 637 : 30 Ind. C. 461, 30 M. 226 . 6 Cr. L. J. 131. *fol.*

—where prosecution was sanctioned under s. 82 of the Registration Act and the accused applied for stay of proceedings pending decision in a suit he had filed in the civil court, the M. should stay the proceedings. 5 C. W. N. 44, 5 C. L. J. 233, 1 Pat. L. T. 697 : 62 I. C. 185 : 22 Cr. L. J. 489.

—the officers of the Crown in the majority of cases are bound to be either Hindus and Mahamedans and if parties to a case are allowed to choose their courts on a communal basis it would not be possible to please them all. 84 Ind. C. 719 : 22 A. L. J. 1103.

—stay of execution of sentence pending appeal to the Privy Council. 28 C. W. N. 377 . 39 C. L. J. 1 : 83 I. C. 580 P. C.

Order of cost of Adjournment.

—a Magistrate has a discretion to require from the accused the costs of an adjournment, when he is not entitled to the adjournment asked for. 9 C. W. N. 18, 28 A. 207 : 2 A. L. J. 831 : A. W. N. 1905, 256, 20 P. R. 1904

—where the accused was absent and was not represented by any pleader or counsel and the adjournment of the case was altogether necessary since the court could not proceed, costs of adjournment could not be awarded on the accused. 6 P. R. 1906 Cr. : 114 P. L. R. 1907 : 4 Cr. L. J. 78, 10 Ind. C. 151

—when one of the accused is not present and an adjournment is necessary the complainant cannot be ordered to pay the cost of adjournment for his failure to produce evidence. 94 I. C. 140 : 1926 Lab. 407 : 27 Cr. L. J. 572.

—the court may award cost as a condition precedent to adjourning a case and make the same payable by the party for whose benefit the case is adjourned, 28 A. 209 : A. W. N. 1905, 257, (note), 28 A. 207 : 2 A. L. J. 831 : A. W. N. 1905, 256, 9 A. L. J. 170 : 14 Ind. C. 652 : 13 Cr. L. J. 268, 1902 A. W. N. 59 *Diss.*

—the words "as it thinks fit" empower the criminal courts to allow the cost of adjournment. 20 P. R. 1904.

—where an adjournment is granted solely at the instance of the complainant he should pay any costs which may be incurred by

S. 344. Order of cost of Adjournment—contd.

the accused But where the prosecution is conducted by the Police for whose convenience an adjournment is granted no order of cost should be made. 21 Bom. L. R. 380; 66 I. C. 991; 23 Cr. L. J. 338.

Remand

—the sec. contemplates remand to jail and not to Police custody 25 B. 32 p. 34

—the detention of an accused under trial is not intended to be penal, but its object is to secure attendance The gravity of the offence and some evidence of its perpetration by the accused will, however, justify detention. 36 C. 174.

—no remand without a hearing can last for a longer period than 15 days. 5 B. H. C. R. Cr. 31.

—if a person is accused of non-bailable offence then, unless he considers that there are no reasonable grounds for believing him to be guilty, M. must refuse bail, though he may be certain that the accused will stand the trial 36 C. 166

—it is the right of an accused to demand that the charge against him should be tried without any unreasonable delay, 36 C. 166, the M. must express clearly on the record the reason for the delay. 6 M. 63, 36 C. 174, 11 M. 28.

—s. 167 relates to remand on perusal of Police diaries whereas this sec. relates to remand when sufficient evidence has been obtained 36 C. 166

—a remand of accused for further confession is bad 2 Weir 414

—if the offence is bailable, the accused ought to be admitted to bail. 8 C. W. N. 779, 36 C. 174, 10 C. W. N. 1093

For other cases see "bail and bailbond,"

Revision.

—the H. C. will not ordinarily interfere if the court exercising judicial discretion refuses to act under s. 344, 50 M. 839, 1927 Mad. 778, 28 Cr. L. J. 812, 104 I. C. 252, 1927 M. W. N. 672.

S. 345. (Compounding offences)

N. B.—By the amendment of 1923 a case under sec. 508 has been made compoundable and the cases under ss. 343, 349, 357, 403, 417, 418, 419, 420, 451, 482, 483, 486, 491, and 509 I. P. C. have been made compoundable with the permission of the court. The addition of sub-sec. (5-A) has set at rest the controversy as to the power of the H. C. acting in the exercise of its power of revision to allow the compounding of a case unholding of P. C. 21 A. L. J. 338. 24 Cr. L. J. C. W. N. 1071 17 Cr. L. J. 39 M. 601, 32 A. 153, 3 Pat

When a case can be compounded.

—under s. 345 Cr. P. C. a case may be compromised at any time before the sentence is pronounced. 45 C. 816. 22 C. W. N. 744,

S. 345. When a case can be compounded—*contd.*

112 I. C. 562; 29 Cr. L. J. 1058: but a M. acts rightly in refusing to permit an attempted compromise at a late stage of the case as regards offences some of which were compoundable and some not. 31 Bom. L. R. 769; 1929 Bom. 375; 1929 Cr. C. 322.

—a composition made before the case comes into court is just as much lawful under s. 345 Cr. P. C. as are made after the case comes into court. 41 M. 685.

—compounding of offences mentioned in the first part of s. 345 Cr. P. C. is lawful even if it takes place before any complaint is filed in court and once a composition is made it has the effect of an acquittal so as to bar the trial. 41 M. 635.

—an offence of wrongful restraint is compoundable by the person restrained even prior to a complaint. 49 A. 434; 101 L. C. 671. 1927 All. 375. 28 Cr. L. J. 495.

—when an appeal is preferred from an order of conviction under s. 325 and during the pendency of appeal the parties compromise, the compromise should be given effect to by the appellate court. 55 C. 1190. 115 I. C. 528; 1929 Cal. 96; 30 Cr. L. J. 434.

—case can be compounded even if sent up by the Police. 3 C. W. N. 548, 10 C. 551

Who can compound an offence.

—an agent who lodged the complaint may legally and effectively compromise the case. 1924 A. 778; 83 Ind. C. 638.

—only the person to whom the hurt is caused and not the complainant, can compound the case, even if the former is dead. 2 Weir 418, 31 A. 606, 37 A. 419

—when a woman is defamed by the imputation of unchastity
 1. complaint being aggrieved under s.
 1. consent of the husband or against
 1. the offence under s. 345 Cr. P. C.

—the only person that can compound an offence of abduction is the husband. 74 Ind. C. 444, 24 Cr. L. J. 780, 4 Lab. L. J. 488

—a complainant can only compound the offence committed against him and not any offence committed against others jointly with him. 27 C. W. N. 168. 37 C. L. J. 254; 73 I. C. 322; 24 Cr. L. J. 578.

—if the offence is compoundable one, then even if the gratification is offered to a person who has no right to compound, it is immaterial. 6 L. B. R. 48.

Compromise by minor.—Sub-sec. (4).

—a minor complainant cannot compound an offence. 17 P. R. Cr. 1891.

—a compromise made by the lawful guardian of a minor acting *bona fide* for his benefit cannot be set aside except on proof of fraud. 2 Weir 631, 25 A. 165, 8 Bur. L. R. 96, 13 P. R. Cr. 1835.

S 345. Permission of court.

—It is a great pity when parties who are apparently nearly related to one another succeed in patching up their quarrels, that the Magistrate should not do what he can to restore peace and good will. 26 C. W. N. 536; 35 C. L. J. 353.

—where the accused were forwarded to the Magistrate on a Police report under ss. 325 and 511 I. P. C. but the evidence recorded disclosed an offence under a 148 the Magistrate could not permit the complainant to compound the case. 4 Bom. L. R. 718; 34 P. W. R. 1907; 11 P. R. Cr. 1907.

—an offence under s. 345 (2) Cr. P. C. cannot be compounded without the permission of the court before whom it is pending. 1928 Lab. 239; 9 Lab. 400; 109 I. C. 601; 29 Cr. L. J. 585; 29 Cr. L. J. 510, 41 M. 685 *Rel. on*. 39 M. 916 *Dist.*

—the Magistrate acted rightly in refusing to permit an attempted composition at a late stage of the case as regards offences some of which were compoundable and some not 31 Bom. L. R. 789. 1929 Cr. C. 322; 1929 Bom. 375.

—no sanction of the court is necessary to compounding an offence after the conviction has been set aside on appeal 3 A. L. J. 523; 1906 A. W. N. 200.

—the permission to allow withdrawal is a judicial act. Ratapal 92.

When the Court is bound to allow compromise.

—the M. has the discretion to allow compromise. Unless the offence is so serious that punishment is absolutely necessary the M. would well exercise his discretion in allowing composition of the offence. Where the M. refused composition without sufficient reason the H. C. in revision enforced the compromise. 65 I. C. 437; 1923 Lab. 138.

—where a compoundable case is compounded, the Magistrate cannot convict the accused of an offence disclosed by the evidence. 2 Weir 418, 1 L. B. R. 349, 4 Bom. L. R. 718.

—when a case is compromised the M. cannot proceed with the case 112 I. C. 562 29 Cr. L. J. 1058

—when the parties put in a petition of compromise, a Magistrate is not entitled to call for further evidence to prove it. 16 Cr. L. J. 88.

—the Magistrate cannot prevent composition of compoundable offences. 10 C. 551, 1884 A. W. N. 256, 1883 A. W. N. 245, 1886 A. W. N. 167.

—a Magistrate is not prevented from taking steps under s. 345 Cr. P. C. in cases in which a breach of the peace has been committed and the parties acting privately had compounded the offence. 26 A. 202.

What amounts to compounding a case.

—mere signing of a *muchafika* does not amount to a composition of case. 90 I. C. 666, 49 M. L. J. 544; 26 Cr. L. J. 1591; 1952 M. W. N. 753.

S. 345 What amounts to compounding a case—contd

Ques—when a letter of withdrawal was given to the accused on his offering unconditional apology it was a confession of the case and could not be proceeded with. 45 A. 145 : 74 Ind. C. 262.

Reference to arbitration.

When the petitioners were charged under s. 427 and filed a petition for arbitration, the opposite party agreed to refer the matter to arbitration but the opposite party held that the agreement was not a final settlement of the dispute which the court was bound to accept; the case was not taken out of the jurisdiction of the criminal court. 42 C. L. J. 139 : 90 I. C. 544 : 26 Cr. L. J. 1584.

Effect of compromise,—sub-sec. (6).

—the effect of composition of a compoundable offence is the immediate acquittal of the accused and once a composition has been effected the complainant cannot be permitted to withdraw from it. 81 Ind. C. 346 (Lahore), 45 A. 145.

—composition is valid as soon as it is made and it has the effect of an acquittal though one of the parties resiles from the compromise and no statement or petition is filed by the parties in court. 30 M. 946, 16 Cr. L. J. 803, 19 Cr. L. J. 359, 33 C. L. J. 226, 3 C. W. N. 332, 41 M. 685.

—composition of an offence under s. 345 I. P. C. has the effect of an acquittal, but not so under s. 253 and therefore, the discharge is no bar under s. 403 to a retrial. 24 C. 528 : 1 C. W. N. 370.

—a case under s. 323 I. P. C. was compounded and the accused was acquitted, subsequently the wounded man died; there was no bar to his retrial. 36 A. 4.

—where a complaint by wife for cheating husband is compounded by her that composition does not bar a subsequent complaint by husband against the same accused. 51 B. 512 : 1927 Bom. 410 : 29 Bom. L. R. 718, 102 I. C. 549, (21 C. 103, 37 Bom. 339) *Rel on*.

—the compounding of an offence with one or more of several accused has not the effect of acquittal in respect of the remaining accused. 94 I. C. 144 : 1926 Lah. 424 : 27 Cr. L. J. 576, 45 B. 346, 43 A. 583, 41 M. 323, 7 C. W. N. 176 *Diss.* and also see 67 I. C. 592 : 23 Cr. L. J. 432.

—no adverse inference against an accused ought to be drawn from criminal proceedings which terminated in compromise. 17 C. W. N. 238.

—composition of a criminal case does not mean hushing up the matter. 1929 Pat. 512 : 1929 Cr. C. 272.

Compromise does not bar charge under s. 211 I. P. C.

—the plea that original charge has been compounded is no answer to a charge under s. 211 I. P. C. 11 C. 79.

S. 345. Effect of compromise by some of the accused.

—a case may be compromised with some and proceeded against others. 84 I. C. 62 : 16 S. L. R. 149 : 26 Cr. L. J. 238.

—when there are several joint complainants, one complainant can compound the offence committed against himself but not the offence committed against others. 27 C. W. N. 168 : 37 C. L. J. 254 : 73 I. C. 322.

—composition with one accused does not mean acquittal of another. 45 B. 346 and 43 A. 583, 41 M. 323 *fol.*, 7 C. W. N. 176 *diss.*

—compromise of an offence with one or more of several accused persons has not the effect of acquittal in respect of the remaining accused between whom and the complainant no compromise has been effected. 94 I. C. 144 : 1926 Lab. 424. 27 Cr. L. J. 576.

—in a case of assault against several accused, composition with one amounts to the whole offence being compounded. 67 I. C. 592 : 23 Cr. L. J. 432.

Effect of compromise of some of the offences.

—where an accused is charged under ss. 325 and 147 I. P. C. and the former charge is compounded the charge under s. 147 does not *ipso facto* lapse. 86 I. C. 62. 26 Cr. L. J. 686 : 26 Punj. L. R. 35.

—in case of joint complaint with reference to distinct and independent transaction composition with respect to offence relating to one transaction does not operate as acquittal with reference to the other. 1930 All. 92. 1930 A. L. J. 85. 120 I. C. 117. 30 Cr. L. J. 1149. 1930 Cr. C. 81.

Proof as to the fact of compromise.

—when one party alleges composition and the other party denies, the Magistrate is to take evidence concerning the factum of composition. 39 M. 946, 41 M. 685.

—where an accused person alleges that an offence with which he is charged has been compounded so as to take away the jurisdiction of the Cr. Court to try it, the onus is on him to show that there was composition valid in law. 21 C. 103.

—the onus is on the accused to show that the composition is valid in law. 21 C. 103.

Compounding an offence supposes an agreement similar to that under the Contract Act.

—compounding an offence supposes an agreement by which the parties have settled their differences and implies that the prosecutor has received some consideration or gratification for dropping the prosecution. It is similar to an agreement under the Contract Act. 21 C. 103.

—but a lawful composition may be effected without the passing of any consideration. 9 P. R. 1896, 10 Cr. L. J. 228.

Admission of evidence of negotiation of compromise.

—admission of evidence of negotiation of compromise which tended to show that the accused had admitted his guilt, is bad and vitiated trial. 11 C. W. N. 26 (note).

S. 345. Compromise cannot be withdrawn.

—a petition of compromise once filed cannot be withdrawn and the Magistrate should accept the petition. 3 C. W. N. 322, 3 C. W. N. 548, 7 C. W. N. 176.

—the effect of composition of a compoundable offence is the immediate acquittal of the accused and once a composition has been effected the complainant cannot be permitted to withdraw from it. 81 I. C. 346 (Lahore), 45 A. 145.

Compromise of non-compoundable offence.

—compromise of non-compoundable offence is against public policy and so the terms thereunder or any bond in consideration thereof, cannot be enforced. 16 C. W. N. 854, 18 C. W. N. 192 (note), 19 C. W. N. 383, 20 C. W. N. 760.

—it may be compounded with the person aggrieved and a contract may be entered into with him. 37 M. 385.

—when the complaint is both under compoundable and non-compoundable ss but the accused is summoned under compoundable sec. it may be compromised. 20 C. W. N. 44 (note).

—compromise of case under sec. which is compoundable with the leave of the court is valid when it is made with such leave; it does not matter if the complaint mentions some other non-compoundable offence. 20 C. W. N. 946.

—the M. must give effect to the compromise though by mistake he had mentioned a non-compoundable offence in the summons of the accused. 2 P. L. T. 602.

—the court cannot, on the presentation of the petition of compromise, alter the charge to one which is non-compoundable. 16 Cr. L. J. 81 F. B.

Order under s. 350 Cr. P. C. cannot be passed.

—in case of compromise compensation order under s. 350 Cr. P. C. cannot be passed. 10 Bom. L. R. 1056, 19 P. R. 1888.

S. 346 Procedure of Provincial Magistrate in case which he cannot dispose of.

—this sec. does not apply to a case in which the Magistrate is competent to make a valid committal. 7 C. W. N. 457.

—no court can clutch jurisdiction by improperly ignoring facts of aggravated character. 2 Weir 421, 24 M. 675.

—nor can a M. split up an offence into its component parts for the purpose of giving himself jurisdiction. 1 C. L. R. 434, 29 C. 409, 11 C. 236, 4 C. 18; 3 C. L. R. 44, U. B. R. 1897-1901 vol. 184.

—but if the same facts disclose an offence which is triable by the M. he is not incompetent to try that offence merely because the same facts disclose a more serious offence. 24 M. 675.

—a M. who has no jurisdiction to try a case cannot discharge the accused under s. 253 Cr. P. C. but should proceed under this sec. 2 Weir 323.

—the submittal under this sec. is not proceeding in the nature of commitment and the superior M. cannot return the case with

S. 346. Procedure of Provincial Magistrate in case which he cannot dispose of—contd

direction to prepare charge under a particular sec. 4 M. 327, Rat. Un. Cr. 499

—the M. to whom the case is sent under this sec must take fresh evidence and try *de novo*, 17 L. W. 247; 72 I. C. 525; 25 P. R. Cr. 1905; 361 I. L. R. 1905; 14 W. R. Cr. 3, 4 M. 327, U. B. R. 1897-1901 Vol. 185, the consent of the accused cannot dispose with this procedure, 91 P. L. R. 1905; 2 Cr. L. J. 369; 25 P. R. 1905 Cr.; 17 L. W. 247; 72 I. C. 525 *contra*, 12 C. W. N. 136; 6 Cr. L. J. 429.

—Proof of previous conviction is a matter of consideration under this sec. 1894 A. W. N. 200.

—where a case is submitted by a Sub-Magistrate to a Sub-divisional M. under s. 346 his jurisdiction determines and the latter cannot send the case back without taking any action. 1922 M. W. N. 641; 31 M. L. T. 365; 69 I. C. 438; 23 Cr. L. J. 710.

—but it has been held by the F. B. of the same H. C. that where a case under s. 148 I. P. C. is referred by a second class M. to the Joint Magistrate under s. 346 (1) Cr. P. C. the latter can transfer the case to the Taluk Magistrate for disposal, 1930 M. W. N. 493; 59 M. L. J. 308; 1930 Mad. 76; F. B.

—evidence taken by one M. is not evidence in a trial before another M. unless some provision of the law expressly makes it so. Even the consent of the parties will not do. 17 L. W. 247; 72 I. C. 525; 24 Cr. L. J. 413.

—the word "evidence" in s. 346 means all acts and statements which have been disclosed by enquiry and is not restricted to depositions recorded by the M. 100 I. C. 992; 1927 Mad. 591; 28 Cr. L. J. 384.

—when a M. directs under s. 202 Cr. P. C. inquiry by another M. or police officer or other person, he does so in the course of his own inquiry into the evidence. 100 I. C. 992; 1927 Mad. 591; 28 Cr. L. J. 384.

S. 347. Procedure when after commencement of inquiry or trial, M. finds case should be committed.

—this section is couched in general terms and gives the M. very wide powers. 1925 Rang. 207; 89 I. C. 525; 26 Cr. L. J. 1389.

—s. 347 cannot be read as subject to sec. 208 so as to render it imperative on a M. after he decides to commit the case in the Sessions, to allow the accused to cross examine the prosecution witness and to call witness for the defence. The M. is justified

S. 349. Procedure when M. cannot pass sentence sufficient-ly severe—*contd.*

—when a M. sends up a case he is merely empowered to record his opinion that the accused is guilty and ought to receive a punishment different in kind from or more severe than that which he can inflict. But his finding of guilty of such offence is a surplusage and cannot affect the finding of the trying M. and may be treated as a nullity without a formal order quashing the same. 52 B. 456 : 1923 Bom. 240 : 111 I. C. 664 : 29 Cr. L. J. 904 : 30 Bom. L. R. 620.

—the superior M. cannot send back the case to the referring M. on the ground (i) that the referring M. had power to pass adequate sentence, 26 A. 344, A. W. N. 1904, 42 (ii) that the referring M. should commit, 9 M. 377, 10 B. 196, Rat. Un. Cr. 222, 479, 998 (*contra*, 14 C. 355, 1 M. L. J. 252), (iii) that the referring M. should take the defence of an accused, 3 L. B. R. 279 : 5 Cr. L. J. 416, nor can he send the case for inquiry to another M., 4 M. 233, 6 M. H. C. R. Ap. 2, 1905 U. B. R. Cr. 33 : 2 Cr. L. J. 464 P. C., nor can he quash the proceedings of the referring M. and order retrial by another competent M. 14 P. R. Cr. 1900.

—but he can send back the proceedings when he considers the
2 Weir 426.
send up the

ion that the
er the whole
case to the proper authority ; 35 C. 1093, he cannot submit the case
nor can the court of appeal
accused under s. 106. 12 C.
1905, 6 P. R. 1907, 7 P. R.

—jurisdiction to deal with proceedings under s. 349 was conferred upon Dt. Ms. and Sub-divisional Ms. and upon no other Ms. 16 Bom. L. R. 598 : 38 B. 719 : 28 Ind. C. 321 : 16 Cr. L. J. 273

—the M. to whom the case is referred may pass such final orders as he thinks fit. He cannot in his turn send it back to another. 1912 A. W. N. 16 : 36 M. 470 : 13 Ind. C. 110 : 13 Cr. L. J. 16, U. B. R. 1905 Cr. 33 : 2 Cr. L. J. 464, P. C.

—when a second class M. sent a case to the joint M. as he thought an order under s. 106 Cr. P. C. was necessary and the latter passed the order, while he sent the case back to the M. for trial the order was without jurisdiction. 74 I. C. 448 : 24 Cr. L. J. 784.

S. 350. Conviction or commitment on evidence partly recorded by one M. and partly by another.

Applicability of the sec. Sub sec. (1), trial by successor.

—this sec. is not limited to cases in which Ms. succeed each other but to transfer of the case from one M. to another. 33 C. 457 : 12 O. W. N. 416, 20 C. 870, 3 A. 365, 32 M. 218, *fol.* 23 C. 194, 13 W. R. Cr. 40, 14 W. R. Cr. 3, 19 W. R. Cr. 28, 24 W. R. Cr. 53, 14 A. 346 *Dist.*, 1889 A. W. N. 130 *not fol.* 17 C. P. H. R. Cr. 159.

S. 350. Appellability of the ass. Sub-ss. (1), trial by assessor—contd.

—on general principle judgment must be delivered by the judge who has heard the evidence. 23 C. 194, 23 W. R. Cr. 59.

—the Cl. (a) of this sec. read along with s. 117 Cl. (2) applies to a case under s. 107, 1920 M. W. N. 280 F. B., 4 C. L. R. 452, 23 W. R. Cr. 62, 24 W. R. Cr. 52.

—this sec. applies to s. 145 proceedings; 5 Pat. L. T. 237; 76 I. C. 25; 25 Cr. L. J. 89, 13 C. W. N. 420; 9 Cr. L. J. 278, and to commitments. 31 M. 440

—in a proceeding under s. 145 Cr. P. C. a *de novo* trial is not necessary on transfer of M. 37 C. L. J. 128.

—the provisions of this sec. apply to an inquiry under s. 247 of the C. P. Municipality Act. 1925 All. 245, 81 I. C. 139; 25 Cr. L. J. 631.

—this sec. applies only to Ms. and not to Sessions Judges, 9 C. L. J. 59; 8 Cr. L. J. 121, 26 B. 50; 3 Bom. L. R. 558, 7 C. P. L. R. Cr. 1, 3 M. 112, 23 W. R. Cr. 59, 21 W. R. Cr. 47, 1864 W. R. Sup. 32, 20 P. R. 1870.

—this sec. does not apply to Benches of Ms. 23 C. 194, 12 C. 558, 20 C. 870, 18 M. 394.

—it does not apply to further inquiry directed under s. 437. 6 A. 867, 7 Bur. L. R. 193, 16 M. L. J. 303; 27 M. L. J. 589; 1914 M. W. N. 646; 15 Cr. L. J. 673; 25 Ind. C. 1001.

—it does not apply to cases withdrawn under s. 528 U. B. R. 1897—1901, Vol. 1, 87, U. B. R. 1912, 149; 14 Cr. L. J. 175; 19 Ind. C. 175 Dist. 20 C. 870, 24 W. R. Cr. 53 Ref.

—this sec. does not apply when the judicial designation and the local jurisdiction of the M. are changed but not his Magisterial power. 22 M. 47.

—the provision of this sec. applies to summons cases as well as to warrant cases, but the accused will lose his right if he does not ask for this at the time when the proceedings are commenced by the succeeding Magistrates. 83 I. C. 340; 25 Cr. L. J. 1380; 10 O. & A. L. R. 1017, 48 M. 511 *fol.*

—proceedings in a warrant case before a charge is framed are merely an inquiry and not a trial and at that stage the M. is not bound to adopt the procedure laid down in s. 350 (1) (a) Cr. P. C. 46 M. 719; 32 M. L. T. 81; 71 I. C. 608; 24 Cr. L. J. 192

—this Code makes no provision for delivery of judgment written by the M. who heard the case after he had ceased to have jurisdiction in the District. 50 C. 664; 38 C. L. J. 202.

—this sec. would under certain circumstances give the assessor the case on evidence recorded by the M. who heard the case after he had ceased to have jurisdiction in the District. 50 C. 664; 38 C. L. J. 202. 43 C. L. J. 100; 93 I. C. 70

—where a 2nd class M. after examining nine prosecution witnesses in chief submitted the case to the S. D. M. on the ground

S. 350. Applicability of the sec. Sub-sec. (1), trial by successor—contd.

that the offence appeared to be one not triable by him and S. D. M. referred the case to a first class M. having jurisdiction, the latter could not legally consider the evidence recorded by the 2nd class M. 55 C. 65 : 47 C. L. J. 122.

—when a case is remanded by the appellate Court and the trial court is transferred the new Judicial Officer should try the case *de novo*. 97 L. C. 645 : 27 Cr. L. J. 1125 : 1927 Pat. 5, 25 C. 863 *Rel on*.

—a judgment may be signed and dated by the successor in office 10 O. & A. L. R. 1101 : 11 O. L. J. 725 : 81 I. C. 899, (40 M. 104, 7 M. L. J. 197) *fol*. 72 I. C. 953 *Dist*.

—in the absence of a demand for a new trial it would be in the discretion of the M's successor to date, sign and pronounce his predecessor's judgment. 40 M. 180 : 17 Cr. L. J. 66.

—when a M. is transferred after part hearing of a case and his successor grants *de novo* trial of the case, the transfer of it by the Dt. M. to the transferred (original) M. with a view to avoid a *de novo* trial cannot empower the latter to begin the case from where he left 85 I. C. 254 : 1925 Mad. 174 : 47 M. L. J. 92b : 20 L. W. 847, 53 I. C. 820 *fol*., 99 I. C. 55 : 1927 Mad. 81 : 28 Cr. L. J. 23.

—where a M. recording the statements of the accused is transferred and his successor acting upon those statements commit the case to the Sessions, the statements are rightly admitted. 94 I. C. 403 : 1926 Lah. 271 : 27 Punj L. R. 535.

—when a Bench consists of three Magistrates and one alone is present on all hearings sitting sometimes with one and sometimes with the other and sometimes with both the trial is bad though the quorum consists of two. 1928 Oudh 212 : 29 Cr. L. J. 310 : 107 I. C. 875

Trial, meaning of

—the "trial" means the proceeding which commences when the case is called on, with the M. on the Bench, the accused on the dock and the representative of the prosecution and for the defence, if the accused be defended, are present in court; the proper time for the accused to ask for the re-summoning or re-hearing of the witnesses under this sec. is as soon as the trial commences before the second M. 25 O. 863 : 2 C. W. N. 465, 14 Cr. L. J. 230 : 19 Ind. C. 326 : 9 N. L. R. 42, Expl. 3 P. R. 1903 Cr. *Dis*.

—a preliminary inquiry into a case exclusively triable by S. C. is not before framing charge "trial" and when such an inquiry is transferred the accused is not as of right entitled to *de novo* trial. 32 M. 218, 14 P. R. 1903.

De novo trial, meaning of.

—*de novo* trial means a new trial from the beginning of the case. The object of granting *de novo* trial is to enable the M. who hears the case to see the way in which the witnesses give evidence before him to mark their demeanour and thereby to be in a position to judge of their credibility. 1925 M. W. N. 652 : 49 M. L. J. 423 : 26 Cr. L. J. 1596 : 90 I. C. 668.

S 350. Trial, Meaning of—(contd.)

—giving leave to the accused only to cross examine the prosecution witnesses is not *de novo* trial, *above case*.

—in case of *de novo* trial by a M. to whom the case is transferred if a witness is dead and cannot be ressumoned at the instance of the accused his previous evidence is rightly admitted as s 33 of the Ev. Act is in no way affected by s. 350. 8 Leb. 570, 3 Lah. 115, not fol.

—where the successor of a transferred M. grants *de novo* trial even when the case is transferred by the Dt M. to the transferred M with a view to avoid the *de novo* trial the latter cannot avoid to try the case *de novo*. 85 I C. 254; 1925 Mad. 174. 26 Cr. L. J. 510. 47 M L J. 926

Clause (a). Right of the accused to demand re-hearing.

—this sec. gives the accused who is tried by a Magistrate to whom the case is transferred the right to demand that the witnesses or any of them be summoned or re-examined. But this right may be waived by the accused 107 I C. 160; 29 Cr. L. J. 229; 9 A. I. Cr. R. 486

—a *de novo* trial cannot be demanded by the accused simply

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—this sec. confers a right on the accused to demand and does not actually prescribe that the M. shall ask the accused, so where there was no demand or refusal but only an omission to inquire from the accused whether he wished to exercise the right the accused had not been materially prejudiced, nor was a failure of justice occasioned and the error was curable under s. 537 U. B. R. 1912, 149; 19 Ind. C. 173; 14 Cr. L. J. 175, U. B. R. 1897-1901 vol. 1. 87 Ref. 6 P. R. 1884, 3 P. R. 1903, 24 W. R. Cr. 12, 13 C W. N. 550; 10 Cr L J. 492

—where some of the prosecution witnesses are re-summoned and re-examined on the demand of the accused the complainant cannot insist that all the prosecution witnesses should be re-summoned and re-examined and that there should be a *de novo* trial from the beginning. The Cr. P Code does not compel the M. to go the accused wants
317 : 20 L. W. 916.

nesses re-examined
ayment of any fees.

—where a M. recording some evidence is transferred and the accused claims *de novo* trial and the prosecution witnesses appear but the accused remains content with their cross examination the

S. 350. Clause (a). Right of the accused to demand re-hearing—(contd)

C. 120, 1900 Cr. C. 127

Right of the complainant to demand re-examination of witnesses.

—where some of the prosecution witnesses are summoned and re-examined on the demand of the accused the complainant cannot insist that all the prosecution witnesses should be re-summoned and re-examined and that there should be a *de novo* trial from the beginning. The Cr. P. Code does not compel the M. to go on re-examining witnesses, though neither he nor the accused wants to do so. 20 L. W. 916, 152 J. C. 398, 53 I. C. 820, 66 I. C. 826) *Dist.*

Clause (b). Power of higher court or District Magistrate to set aside conviction.

—this sec. confers a right on the accused to demand and does not actually prescribe that the M. shall ask the accused, so where there was no demand or refusal but only an omission to inquire from the accused whether he wished to exercise the right, the accused had not been materially prejudiced, nor was a failure of justice occasioned and the error was curable under s. 537 U. B. R. 1912, 149-19 Ind. C. 173 14 Cr. L. J. 175, U. B. R. 1897-1901 vol. 1, 87 Ref 6 P. R. 1884, 3 P. R. 1903, 24 W. R. Cr. 12, 13 C. W. N. 550: 10 Cr. L. J. 492.

—but sec. 537 does not cure the defect due to the violation of the provision of proviso (a) by a refusal to re-summon and re-hear the witness. 25 C. 863

—where the accused is prejudiced the conviction will be set aside for the violation of the provision of the sec. 13 C. W. N. 550, 14 A. 346, 12 C. W. N. 138, 140, 1889 A. W. N. 130

—the irregularity is not cured by waiver of the accused. 12 C. W. N. 140.

—a Dt. Magistrate can under proviso (b) set aside a conviction passed by a first class M. in the district though no appeal lies from his order to the Dt. M. 9 B. 100, 12 C. 473, 8 M. 18, 7 A. 853.

Sub-section (2). the sec. does not apply to proceedings stayed or submitted to superior court.

—the procedure laid down in this section does not apply to proceedings stayed under sec. 346, 1905 P. L. R. 91, and when the case is submitted to the Dt. M. and—
convict the
although the
P. R. 25, 19 C
trial which e

S. 350. Sub-section (3). Effect of transfer of case.

Sub sec. (3) has been added to remove the conflict of opinions as to the question whether does the sub sec. (1) apply to transfer of cases or is confined to transfer of Magistrates only. The amendment has upheld the decisions which held that this section covers cases where proceedings are transferred by section 325 from the Court of one M to that of the other because as soon as a case is transferred from one M to another the former ceases to exercise jurisdiction within this section 39 C. 781, 35 C. 457, 21 C. W. N. 755, 32 M. 218, 40 A. 307, 36 A. 315, 22 Cr. L. J. 82 (Pat.), 1 P. L. T. 679 20 Cr. L. J. 41 (Nag.) 20 Cr. L. J. 496, 12 Bur. L. T. 55, 1926 U. B. 2, 2nd Qr. 108 *Contra*. 12 C. W. N. 140, 12 A. 16, 14 A. 346, 1989 A. W. N. 130, 1 N. L. R. 187, 1 L. H. R. 301.

S. 350 A changes in constitution of Benches.

N. B.

This section has been newly introduced giving effect to the law as laid down by the High Courts

—the case must be decided by the same Bench which heard the evidence and the arguments 20 C. 870, 23 C. 194, 12 C. 558, 39 M. 304, 41 A. 116, 2 Lah. 237.

—where of the three Bench Ms only one was present throughout the proceedings, the trial was bad 93 I C. 255, 27 Cr. L. J. 463 : 1926 Lah. 304

—the following are the cases where the absence of some member of the Bench during trial was held to vitiate the trial, 36 M. L. J. 362, 23 Bom. L. R. 833, 41 A. 116, 1902 A. W. N. 148, 16 M. 410, 44 M. 400, 13 C. L. R. 212, 8 L. B. R. 463, 13 S. L. R. 168, 13 C. L. R. 212, 22 Cr. L. J. 511 1922 P. L. R. 1, but where only two out of three were present at the time when the trial was commenced

to the *quorum* but were present at the time of the commencement of the inquiry were not on the Bench at the time of decision, the trial was not bad. 3 N. L. R. 67.

S. 351. Detention of offenders attending court.

—this sec. is self-contained and quite independent of the provision of secs 190 and 191. 5 N. L. R. 113 10 Cr. L. J. 303, 3 C. W. N. 279 (note)

—when a M. takes cognizance of an offence against a witness in a case pending before him upon facts disclosed by the evidence of another witness, he does so under s 190 (c) and not under this sec. 1 C. W. N. 105.

S 352. Courts to be open.

—hearing of cases in camera, 17 C. W. N. 187 (note) or at private residence of the M. 10 C. W. N. 1062, was condemned.

—this section does not necessarily make a trial in a jail, invalid, but it is undesirable to hold trials in a jail because it is difficult to get counsel to appear in jail. 1917 P. W. R. 21.

S. 352. Courts to be open.—(contd.)

—a police officer who has investigated into a case should not be allowed to be present during the recording of confession by the M. 1885 A. W. N. 221.

—Ghosha woman should be examined behind *pardah* at a private place. 2 Weir 432.

S. 353. Evidence to be taken in presence of accused.

—the conviction is bad if the witnesses are not examined in presence of the accused. 2 N. W. P. H. O. R. 49.

—evidence for the prosecution as well as for the defence is included in the words "all evidence," so witnesses on both sides must be examined in the presence of the accused and the irregularity cannot be cured by s. 537 U. B. R. 1912 4th Qr. 152; 14 Cr. L. J. 287; 19 Ind. C. 719.

—where in the absence of exceptional circumstances justifying the same as laid down in this section certain witnesses were examined in the absence of the accused the trial was vitiated, the fact of the accused's *Mukhtear* having taken no objection and his cross-examining the witness is immaterial. 1928 Pat. 143; 6 Pat. 681; 107 I. C. 530; 29 Cr. L. J. 260; 9 Pat. L. T. 327.

—*Pardanashin* lady may be examined screened from the direct view of the court and the accused, 41 P. R. 1887, but the court must take precaution to secure her identity, 2 Weir 432, she has the right to be examined on commission 4 C. 20, 12 A. 69, even if she be the complainant. 2 Weir 659, 10 P. R. 1896, *contra*. 5 A. 92.

—a *Pardanashin* accused of good position should not ordinarily be compelled to appear in person in the first instance. 5 P. W. R. 1909, 9 Cr. L. J. 158.

—it is irregular to import into a case the evidence given in another case by merely reading over a deposition to a witness and asking him if it was correct. 12 W. R. Cr 3; 3 B. L. R. Ap Cr. 20, 1864 W. R. Cr 1, 38, 1 Bur. L. R. 399, 24 W. R. 14, but where this was done at the request of the accused's pleader and the accused was not prejudiced H. C. did not interfere. 13 W. R. Cr 40, 9 A. 609.

—it is illegal to convict an accused on evidence taken in connected trial although the accused consented to such a procedure as the provisions of this section are not complied with. 104 I. C. 9; 28 Cr. L. J. 771; 1927 Lab. 781.

—it is improper to take deposition in one case and have them copied out and used in another case and such a course should not be adopted in trial of criminal cases. 27 Q. W. N. 99.

—the H. C. has power under this sec. to dispense with the attendance of an accused in the Sessions on the ground of his ill-health 14 Bom. L. R. 236; 15 Ind. C. 96, 13 Cr. L. J. 464.

—dying declarations must be recorded in the presence of the accused, if not so done it must be proved by person hearing them. 8 C. 211, 6 C. W. N. 72, 921.

S. 353. Evidence to be taken in presence of accused.—(contd)

—In a trial of two cross-complaints when the prosecution evidence in each is taken as the defence evidence in the other, it amounts to letting in evidence in the absence of the accused and violates s 353 Cr. P. C. 4 Lab. 374

—this sec and s. 356 (2) taken together contemplate cases where the whole trial including the delivery of Judgment in cases where the sentence imposed is one of fine only can take place in the absence of the accused. 1930 Nag. 61 : 31 Cr. L. J. 284 ; 121 I. C 651 : 26 N. L. R. 50 ; 1930 Cr. C. 149

S 355. Record in summons cases and in trials of certain offences by 1st and 2nd class Ma.

—this sec. does not apply to offences under s 361 cl (b). 102 I. C. 345 ; 1927 Bom. 426 : 23 Cr. L. J. 537.

—s. 355 merely prescribes a briefer record in summons cases and other cases which may be tried summarily, when they are, as a matter of fact, tried regularly. 3 L. B. R. 3. 2 Cr. L. J. 375, 12 Cr. L. J. 260 10 Ind. C. 921 4 Bur. L. T. 117.

—the M's records in summary trials however brief, must show the necessary ingredients of the offence charged. 6 C. 579, 18 B. 97, 21 A. 375.

—there is no provision in the Code as to the language in which memorandum of the substance of the evidence is to be recorded. 19 M. 269 : 6 M. L. J. 134 : 2 Weir 433.

—in summons cases reading over of the recorded deposition is not prescribed. 2 Weir 433.

—the M. should add a few apt words to make it apparent that the deposition has been taken in presence of the accused. 10 A. 174.

—destruction by M. of the notes of the evidence in a non-appealable case is bad. 48 C. 280, 21 Cr. L. J. 299 approved.

—s. 355 does not require that the evidence of witnesses should be read over to them in a case triable summarily 65 I. C. 552. 23 Cr. L. J. 120.

—when a M. trying a warrant case summarily takes down the substance of the deposition of each witness but does not sign the record the procedure is illegal vitiating the trial. 3 Pat. L. T. 322 : 65 I. C. 546 : 22 Cr. L. J. 114.

—s. 355 does not require that the evidence of witnesses should be read over to them in a case triable summarily 1 Pat. L. R. Cr. 159 : 1923 P. 157.

S. 356. Record in other cases outside Presidency towns.

—omission to record the evidences in the manner prescribed by this sec. is material error, 20 W. R. Cr. 14 : 11 B. L. R. Ap. 5, 19 Cr. L. J. 235 (Pat.), 1891 A. W. N. 145, 1890 A. W. N. 164, 17 A. L. J. 1146, *contra*, it is not an illegality which would vitiate the trial, 6 O. C. 73.

—omission to make memorandum of statement of witnesses is a mere irregularity. 1928 Oudh 112 : 106 I. C. 582 : 29 Cr. L. J. 70.

S. 356. Record in other cases outside Presidency towns.—contd.

—when the court convicts the accused on his own plea non-compliance with the sec. does not vitiate the trial. 2 C. J. R. 317.

—provisions of sub-sec (1) are imperative and those of sub-sec (3) apply only to cases in which the evidence are recorded in the M's own hand, 42 C 381. 19 C.W. N 124: 16 Cr. L. J 192.

—testimony of the medical officer must be taken fully, specially in a murder case. Rat. Un Cr. 792.

N B.—Provisions have been made by adding Cl. (2 A) by the new Amending Act, as to the recording of evidence given in any other language, not being English, than the language of the court.

—this sec prescribes the manner in which evidence is to be recorded in warrant cases 41 C L J. 352.

—the provisions of s. 145 are of a quasi civil nature and the procedure prescribed in s. 356 applies for taking evidence in such cases. 1925 Oudh 286

—where there is discrepancy in a material part of the evidence of the principal prosecution witnesses between the record in the vernacular in which the witness deposed and the record in English, the accused is entitled to the benefit of doubt created thereby. 24 Cr L. J. 624 (Lah).

S. 357 Language of record of evidence.

—the authority conferred on an officer under the sec. is personal and local. 5 M. H. C R Ap. 9. Where the M. under the belief that the authority given to him in another district to record the deposition in his own handwriting still remained in force, committed the accused for trial the M's proceeding was irregular but the commitment was not set aside as the accused was not prejudiced. 2 Weir 434

—the plea should be recorded in the language in which it is conveyed to the court. 5 C 826.

—when the court is composed of more than one Judge, signature of only one judge is sufficient 1928 Lah. 125: 29 Punj L R. 11-107 I. C 100: 23 Cr. L. J. 212

S. 359. Mode of recording evidence under ss. 356 and 357

—it is not compliance with the law to record a more or less accurate paraphrase of the evidence. 11 Bur. L. R. 8.

—this evidence should ordinarily be taken down in the first person exactly as spoken by the witness. 15 W. R. Cr. 36: 8 B L. R Ap. 21.

S. 360. Procedure in regard to such evidence when completed.

Scope and application of this section.

—this sec. was enacted not only to protect the witness but also the accused. 41 C. L. J. 224. 23 C. W. N. 968

S 360 Scope and application of the section.—(contd.)

—but it has been held by the Privy Council that the object of reading over the depositions to the accused is to obtain an accurate record from the witness of what he really means to say and to give him an opportunity of correcting the words taken down and it is not to enable the accused or his advocate to suggest corrections. 41 C. W. N. 271; 45 C. L. J. 441; 100 I. C. 227; 8 P. L. T. 185; 1925 P. C. 44; 29 Bom. L. R. 259; 1927 M. W. N. 103; 28 Cr. L. J. 259 P. C.

—the object of the sec. is to ensure the accuracy of the record. 41 C. L. J. 234; 6 Pat. L. T. 494; 86 I. C. 991; 28 C. W. N. 958; 51 C. I. 36 C. 955; 42 C. 240; 24 C. 119.

—there is nothing in the section to require that the deposition should first be read over as recorded in English and should then be translated into the language in which the witness has deposed. 46 C. L. J. 365; 100 I. C. 545; 29 Cr. L. J. 49; 1928 Cal. 27.

—provisions of sec. 360 are applicable to proceedings under s. 117 Cr. P. C. 41 C. L. J. 355; 1925 Cal. 720; 52 C. 632; 88 I. C. 456.

—the provisions of s. 360 (1) are not applicable to proceedings under Chapter XII as parties to proceedings are not "accused." 41 C. L. J. 357; 49 C. 187; 34 C. L. J. 125 *dissented from, contrn., below*.

—by the terms of s. 356 Cr. P. C. the evidence taken in proceedings under Chap. XII has to be recorded under the provisions of this sec. Accused in sub-sec. (1) means a person over whom the criminal court is exercising jurisdiction. 52 C. 437; 29 C. W. N. 474; 86 I. C. 978; 41 C. L. J. 357; 1925 Cal. 1040; 3 Pat. L. T. 291; 65 I. C. 557; 23 Cr. L. J. 125.

—depositions need not be read over to the witnesses in the presence of the accused in the case of an enquiry under s. 107. 52 C. 468; 89 I. C. 976; 1925 Cal. 940.

—the provisions of sec. 360 apply to inquiries under s. 110 Cr. P. C. 26 Cr. L. J. 1233.

s. 360 applies to Chap. VIII.

—parties to a proceeding under Chapter VIII are not "accused." 50 C. 958; 39 C. L. J. 75; 1925 Cal. 720.

—parties to a proceeding under s. 145 fall within this sec. 41 C. L. J. 479; 29 C. W. N. 701; 52 C. 721; 88 I. C. 714; 26 Cr. L. J. 1194; 1925 Cal. 822 F. B.

—the provisions of sec. 360 apply to proceedings under s. 145 Cr. P. C. to this extent *in best* that as the evidence of each witness is completed, it must be read over to him. 29 C. W. N. 701; 41 C. L. J. 479 F. B.

—the provisions of this sec. should be complied with in an inquiry under s. 476. 18 C. W. N. 1242; 15 Cr. L. J. 483; 24 I. C. 571.

—this sec. does not apply to the examination of the accused. 12 W. R. Cr. 44 nor can the accused take objection that the did not understand the language. 7 C. L. R. 393.

S. 360. Deposition shall be read over to the witness in presence of the accused.

—the sec. is mandatory, the deposition of witness must be read over to the witness in presence of the accused, no practice to the contrary can alter the plain words of the law. 28 C. W. N. 868; 83 I. C. 905, 14 C. W. N. 82; 36 C. 955, 49 M. L. J. 421; 22 L. W. 339; 6 Pat. L. T. 73; 4 Pat. 231, 86 I. C. 996, 42 C. L. J. 585; 30 C. W. N. 644; 1926 Cal. 157; 92 I. C. 887; 27 Cr. L. J. 375, 52 C. 152; 41 C. L. J. 224; 83 I. C. 95; 26 Cr. L. J. 201.

—the reading over of the depositions of the witnesses at the close of the day is not warranted by this section. 30 C. W. N. 644; 42 C. L. J. 585; 1926 Cal. 157; 92 I. C. 887; 27 Cr. L. J. 375, 53 C. 129; 1926 Cal. 563; 94 I. C. 367, 27 Cr. L. J. 638.

—an omission to comply with s. 360 is an illegality which vitiates the trial and cannot be cured by s. 537, 41 C. L. J. 224, 41 C. L. J. 352, 28 C. W. N. 968, 28 C. W. N. 119; 38 C. L. J. 281, 30 C. W. N. 644; 42 C. L. J. 585; 1926 Cal. 157; 92 I. C. 887, 27 Cr. L. J. 375, 49 M. 71; 1925 Mad 1206. *Contra.* It is a mere irregularity curable by s. 537, Cr. P. C. in case such procedure does not cause a failure of justice, 102 I. C. 772; 28 Cr. L. J. 596; 1927 All. 757, 1927 All. 755; 102 I. C. 782; 28 Cr. L. J. 606, 102 I. C. 210; 28 Cr. L. J. 514; 1927 All. 764, mere non-compliance with the provisions of this section does not vitiate the trial unless it results in the failure of justice. 31 C. W. N. 691; 1927 Cal. 575; 28 Cr. L. J. 751; 103 I. C. 799, 95 I. C. 937; 1926 Rang 78.

—but it has been held by the Privy Council that it is dangerous in criminal cases to accept equivalents and except in cases where reading over to the witness would be absurd as for example with a stone deaf person, s. 360 should be complied with. Where however the accused did not understand either the language of the court or of the witness and there was no prejudice to the accused the non-compliance with s. 360 was a mere irregularity. 31 C. W. N. 271; 45 C. L. J. 441; 100 I. C. 227; 8 P. L. T. 185; 1927 P. C. 41; 29 Bom. L. R. 259; 1927 M. W. N. 103; 28 Cr. L. J. 259 P. C.

—the evidence may be read over to the pleader of the accused while the latter is temporarily absent. 46 C. L. J. 368; 1928 Cal. 27; 106 I. C. 545; 29 Cr. L. J. 49

—the evidence of a witness is ordinarily completed when he
 and if necessary re-examined.
 of each witness is completed"
 deposition is completed on a
 was read over on a subsequent
 day and there was no failure of justice non-compliance with the
 provisions of the sec. was cured by s. 537 Cr. P. C., 33 C. W. N. 664;
 1929 Cal. 390; 1929 Cr. C. 26; 122 I. C. 209. 31 Cr. L. J. 373.

—omission to interpret the evidence to the witness does not vitiate the trial. 7 C. 393, 8 W. R. Cr. 63, *Ref.*

—where there was an endorsement in the following terms "read out to the witness and admitted by him to be correct" and the contention was that s. 360 was not complied with, held that under the section it is not necessary that the deposition should be read

S. 360. Deposition shall be read over to the witness in presence of the accused—*contd.*

over within the hearing of the accused and no objection having been taken at the earliest stage there was no ground for interference in revision. 99 I. C. 109; 1927 Pat. 100; 23 Cr. L. J. 77; 8 Pat. L. T. 166.

—where the M. who recorded the confession of the accused was examined as witness and his deposition was read by himself and was not read over to him in the hearing of the accused held, that the deposition was legal evidence. 93 I. C. 884; 5 Pat. 63; 1926 Pat. 232; 27 Cr. L. J. 484.

—but it has been held by the Calcutta High Court that it is not a sufficient compliance with the section that a witness reads his deposition himself and admits it to be correct. 87 I. C. 113; 1925 Cal. 1120; 26 Cr. L. J. 951; 51 C. 431; 29 C. W. N. 650; 88 I. C. 602; 26 Cr. L. J. 1178; 1925 Cal. 762.

—It is also not sufficient compliance where the deposition is read by a witness himself and is explained by the S. J. to the accused but not in the presence of the witness. 29 C. W. N. 526; 1925 Cal. 729; 87 I. C. 833; 26 Cr. L. J. 1009.

—not reading over the deposition to the witness before his signing is not such an irregularity as to make the evidence inadmissible. 5 Pat. L. T. 237; 76 I. C. 25; 25 Cr. L. J. 89.

—while the deposition of one witness is read over the court should not examine another witness. 2 Weir 435; 11 Bur. L. R. 8.

—It is not proper for a M. to examine a number of witnesses and ask them to be in a room and then have the depositions read over to them at the end of the day's work. Such procedure vitiates the trial. 22 L. W. 339; 49 M. L. J. 421; 90 I. C. 659; 1925 M. W. N. 759; 1925 Mad. 1206.

—there is nothing in s. 360 Cr. P. C. to indicate that a M. should record that the deposition was read over in the presence of the accused though it is much better to do so in order to prevent complaints as in his not having done so. 4 Pat. 438; 86 I. C. 91; 26 Cr. L. J. 927; 6 Pat. L. T. 493.

—where this sec. has not been complied with in the committal court the proper procedure is to send the case back to the committal court and have the defect in procedure cured by re-calling the witnesses whose evidence was not read over to them in presence of the accused. 29 C. W. N. 698; 88 I. C. 1052; 26 Cr. L. J. 1276; 1925 Cal. 928.

—an omission to comply with the provisions of this sec. in recording the deposition bars such deposition to be used as evidence in any subsequent proceedings (here trial under s. 211 I. P. C.). 1928 Cal. 271.

Sufficient compliance with the section, what is and what is not.

—It is not sufficient compliance with the sec. where the deposition is read over by a witness himself and is explained by the S. J. to the accused though not in the presence of the witness. 29 C. W. N. 526; 1925 Cal. 729; 87 I. C. 833; 26 Cr. L. J. 1009.

S. 360. Sufficient compliance with the section, what is and what is not.—(contd.)

—it is not sufficient compliance with the provisions of sec. 360 that the witness read his deposition himself and admitted it to be correct. 29 C. W. N. 650 : 52 C. 431 : 88 I. C. 604 : 26 Cr. L. J. 1178 : 1925 Cal. 781, 87 I. C. 103 : 26 Cr. L. J. 951, but see 93 I. C. 884 : 5 Pat. 63 : 1926 Pat. 232 : 27 Cr. L. J. 484.

—the sec. is complied with if the deposition is read over to the witness in presence of the pleader for one out of twenty-seven accused, a deposition so read over is admissible in evidence against the witness in a case of perjury. 36 C. 808.

—the evidence may be read over to the pleader of the accused while the prisoner is temporarily absent. 46 C. L. J. 368.

—where the deposition was handed over to the witness to read it over himself the sec. was not complied with. 18 C. W. N. 1242 : 15 Cr. L. J. 483 : 24 Ind. C. 571.

—reading over deposition of witnesses while the other witnesses are examined is not sufficient compliance with sec. 360 and a commitment to the Court of Sessions is bad. 41 C. L. J. 393, 26 Cr. L. J. 1267 : 1925 Cal. 933 : 52 C. 499, 88 I. C. 1043, 87 I. C. 840, 26 Cr. L. J. 1016 (C), 52 C. 499 : 88 I. C. 733 : 26 Cr. L. J. 1213 : 1925 Cal. 831.

For other cases see above.

Correction of deposition.

—the deponent may correct his deposition. 10 C. 937, 18 W. R. Cr. 57, 13 W. R. Cr. 17.

Conviction of perjury.

—a witness cannot be convicted for perjury before a criminal court if his deposition was not read over to him in the presence of the accused or his pleader, nor such evidence is admissible in evidence. 12 C. W. N. 845, 28 M. 308 *fol.*

—but the deposition, of a witness not read over is admissible under s. 145, Evl. Act. to contradict the witness at a subsequent trial. 104 I. C. 100 : 1927 Pat. 315 : 6 Pat. 478 : 28 Cr. L. J. 772.

Revisional power.

—where the point is raised in revision for the first time that the provisions of the sec. were not complied with, but it is not stated whether it was so with respect to all the witnesses or some only, the H. C. would not entertain the objection unless the accused was prejudiced. 6 Pat. L. T. 154 : 86 I. C. 459 : 26 Cr. L. J. 811 : 1925 Pat. 414.

—where a large number of witnesses were examined without complying with the provision of the sec. and a reference was made by the court to the H. C. to quash the proceedings and start a *de novo* trial and the accused objected, held that the proper order was to send back the case to the committal court and have the defects cured by recalling the witnesses. 29 C. W. N. 698 : 1925 Cal. 928 : 88 I. C. 1052 : 26 Cr. L. J. 1276.

S. 361. Interpretation of evidence to accused or his pleader.

—It is sufficient if the prisoner is made to understand what the document is and for what purpose it is used 15 W. R. Cr. 25

—If evidence is given in language not understood by the accused or his pleader it is under this section to be interpreted into their language while under s. 360 it is to be interpreted to the witness in his own language 31 C. W. N. 271 45 C. L. J. 411. 100 I. C. 227 8 P. L. T. 185. 1927 P. C. 44 29 Bom. L. R. 259. 1927 M. W. N. 103 28 Cr. L. J. 259 P. C.

—if the accused appears by a pleader who understands the language in which the evidence is given by the witness, the omission to interpret the evidence to the accused is not a material defect 24 W. R. 50 Cr.

—the first two paragraphs are not mutually exclusive. An accused person is often in much better position than his pleader to follow the drift of the evidence, so he should be kept informed of what is being said. But if there be no failure of justice non-compliance with the sec. is mere irregularity not vitiating the trial. 1930 Mad. 186 1929 M. W. N. 898 1930 Cr. C. 186

S. 362. Record of evidence in Presidency M's courts.

This sec. has been amended.

—a M. must comply with the provisions of sec. 362 (1) and (2) when he deals with a case under s. 452 read with sec. 511 I. P. C., and passes a sentence of one year's rigorous imprisonment, though the sentence is to be served in the Dharwar Juvenile Jail. 85 I. C. 134 : 25 Cr. L. J. 454. 1925 Bom. 147. 26 Bom. L. R. 1232.

—the Presidency M. is not bound to record the evidence of witnesses though it is desirable that he should keep some record of such statements 33 C. 1036. 4 C. L. J. 408 4 Cr. L. J. 363, 16 C. 799 Ref. 9 C. L. J. 439 : 13 C. W. N. 318 Dis.

—in cases where the P. M. makes reference, he is not absolved from the duty of recording evidence though it is not necessary that he should provide the H. C. with the same materials as in a case from a Mofussil Magistrate. 13 C. W. N. 318 10 Cr. L. J. 122, 30 A. 334

ary with the P. M. to

9 This has been given

s of all material facts
ation in chief or cross-

S. 363. Remarks respecting demeanour of witness.

—s. 363 empowers a M. to record such remarks, if any, as he thinks material respecting the demeanour of such witness whilst under examination. Where the M. noted in the deposition that the witness had not spoken the truth it was a ground for transfer

S. 363. Remarks respecting demeanour of witness.—
(*contd.*)

of the case. 29 C. W. N. 316; 85 I. C. 708; 1925 Cal. 480; 26 Cr. L. J. 852.

—this sec. makes it incumbent on the M. to record remarks which he may consider material on the demeanour of the witnesses but he cannot make and record any remark about the substance of the deposition of witnesses. 1928 Lah. 975; 30 Cr. L. J. 129; 10 Lah. 778; 113 I. C. 321.

—judge may note the demeanour of witness. 2 Weir 435

—the appellate court should give due consideration to the strong notes of the original courts as regards demeanour of the witness; where the evidence is all oral and its credibility is a mere matter of opinion the opinion of the original court must be treated as conclusive. 125 P. L. R. 1914; 27 P. W. R. 1914; 15 Cr. L. J. 303; 22 Ind. C. 987, 97 P. W. R. 1904; 1 Cr. L. J. 781; 7 P. W. 1204 Cr. Fol.

S. 364. Examination of accused how recorded.

—where the examination of the accused was not in the record and the order-sheet contained the following remark: "the accused declined to make any statement in the court and on being asked whether they could adduce evidence they replied in the negative," the provisions of s. 364 were violated and the trial was vitiated. 53 C. 403; 41 C. L. J. 50; 86 I. C. 345; 1925 Cal. 575; 26 Cr. L. J. 761.

—a record of a dying declaration in the manner provided by s. 364 is obligatory as its absence may seriously prejudice the accused. 52 C. 446; 88 I. C. 860; 1935 Cal. 821; 26 Cr. L. J. 1244.

—all that a court has the right to do under this sec. is to ask the accused person to explain the circumstances which appear in evidence against him; where questions were put which elicited a statement of a confessional nature such examination was wholly inadmissible. 15 C. L. J. 323; 14 Ind. C. 667; 13 Cr. L. J. 283.

—where the M. instead of asking separate questions put the accused a long composite question, the examination of the accused was irregular and not in accordance with law. 103 I. C. 847; 1927 Lah. 650; 28 Cr. L. J. 767

—this sec. authorises the Magistrate to put questions to the accused in order to enable him to explain any evidence produced against him during any enquiry or trial. So no question can be put to the accused before the enquiry is commenced. 1930 Lah. 454; 123 I. C. 540; 31 Cr. L. J. 533; 1930 Cr. C. 558.

—the absence of the question put to the prisoner does not

—an accused who refuses to sign statement does not commit an offence under s. 180 I. P. C. 39 A. 399; 18 Cr. L. J. 559.

S. 364. Examination of accused how recorded.—(contd.)

—a person against whom no process has been issued is not an accused 32 C. 1085

For other cases see, "Recording of confession."

S. 366. Mode of delivering judgment.

What is judgment.

—judgment means the expression of the opinion of the Judge or M. arrived at after due consideration of the evidence and of the arguments 21 C. 121 p. 127.

When and how and by whom judgment shall be delivered.

Who can pronounce the judgment.

—under this sec. it is not necessary that the Presiding Officer writing the judgment should be the same person who is required to date, sign and pronounce it, in open court, 18 M. L. J. 197; 7 Cr. L. J. 459, a successor may pronounce judgment of the predecessor adopting it as his own, 40 M. 108; 1 Cr. L. J. 166

S. C. 192 Oudh.

242. A. W. N.

want of complete

judgment in writing may be cured by s. 537 as provided in sub-section. (4). 23 C. 502, 43 M. L. J. 369. 1922 M. W. N. 579 F. B.

Delivered in open Court.

—the judgment must be delivered in open court 21 C. 121, 13 W. R. 209, except under special circumstances 1 Bom. L. R. 117; 25 M. L. J. 445. 14 M. L. T. 313; 1913 M. W. N. 863; 14 Cr. L. J. 595 *Ref*

Without delay.

—judgment should be delivered without undue delay, 5 C.P. 24.

In presence of accused

—the Judgment should not be pronounced in the absence of the accused. Rat. Un. Cr. 325.

Legality of sentence without judgment.

—to deliver a sentence before writing reasons for the decision is a procedure neither contemplated nor permitted by this and the following secs. 58 L. R. 131; 12 Ind. C. 968; 12 Cr. L. J. 610; 21 C. 121, 23 O. 50, 20 C. 253.

—the omission to write a judgment before an accused is sentenced is only an irregularity curable by s. 537 unless there has been a failure of justice. 81 L. C. 193; 25 Cr. L. J. 705

Effect of loss of record.

—this sec. only imposes the condition that the judgment should be pronounced in open court and imposes a few other conditions, but they do not include the condition that the record should not have been lost, or that if only a portion of the judgment, relating to sentence only is pronounced, the conviction is illegal. 14 M. L. T. 317; 25 M. L. J. 445; 1913 M. W. N. 863; 14 Cr. L. J. 595; 21 Ind. C. 467, 38 M. 498.

S. 364. Effect of loss of record.—(contd.)

—in case a judgment has been lost, the appropriate course for a judge is to re-write the judgment from memory and from the materials on record and place it on record. 38 M. 498.

S. 367. Language and contents of judgment. Written by the Presiding Officer, etc.

—and in the hand-writing of A. 242, but where it was the procedure was held a J 411.

N. B. This point has been made clear by the recent amendment which provides that the judgment may be written "*from the dictation of such Presiding Officer*" and "*where it is not written by the Presiding Officer with his own hand, every page of such judgment shall be signed by him.*"

—where the chairman of the Bench of Ms. differs, one of the majority should be asked to write the judgment. 91 I. C. 394: 1926 Mad. 34 27 Cr. L. J. 90.

—judgment written and signed when Presiding M. was on leave is no judgment. 18 Cr. L. J. 10.

—the defects cannot be cured by s. 537. 1 Bur. L. J. 122, 73 I. C. 328. 24 Cr. L. J. 584.

—where the judgment was pronounced in open court but was not signed by the M. the omission was an irregularity which could be cured by s. 537 Cr. P. C. 7 Rang. 370, 47 A. 284 fol.

—the provisions s. 367 Cr. P. C. are mandatory. A judgment should be signed at the time of pronouncement and no substantial alteration or addition such as statements of points of determination and the reasons for the decision can be made after delivery 11 Pat. L. T. 195 122 I. C. 531: 31 Cr. L. J. 416: 1930 Cr. O. 90 1930 Pat. 148: 8 Pat. 904

Language of the judgment.

—under this sec. judgment should be written in the language of the court or in English. 4 C. L. J. 232: 4 Cr. L. J. 162.

Contents of judgment.**Particulars.**

—the judgment must contain sufficient particulars. Rat. Un. Cr. 833, so as to satisfy the appellate or revisional court that the case has been examined from every aspect. 93 I. C. 241: 1926 All. 318: 27 Cr. L. J. 449.

—it must clearly indicate that the court duly considered the evidence. 1 C. W. N. 169.

—it must discuss the facts or the ground of appeal. 91 I. C. 690: 27 Cr. L. J. 114.

—findings should be on all charges. 13 W. R. Cr. 50.

—the common object must be specified. 35 C. 718, 36 C. 158.

—in a case of rioting with common intention of taking possession of complainant's land, possession must be decided. 53 C. 471: 96 I. C. 527: 1926 Cal. 945: 27 Cr. L. J. 975.

S. 367. Contents of judgment.—(confd.)

—the judgment should be clear, systematic and straightforward. 14 C. W. N. 23 (Note).

—It should not be based partly upon evidence and opinions formed in another criminal case. 11 C. W. N. 151 (note)

—though in case of summing up the Judge is not to record a judgment but only to record the heads of the charges to the jury that charge must convey sufficient information to the appellate court as to the explanation of the law by the Judge and about important questions of fact 30 C W N 693; 43 C L J 537; 96 I C 270; 1926 Cal 895 27 Cr. L J. 936 91 I. C 225 27 Cr. L J. 49.

—there was sufficient compliance with the law where the Judge's record of the charge was as follows "as 36f and 366 I P C. read and explained to the jurors" 9 Pat 148 1930 Pat 243: 1930 Cr. C 511

Reasons

—when the M. has given strong and legal reasons for his conclusion, his omission to refer to minute details of the case does not vitiate the judgment. 71 I C. 597 - 24 Cr L J 181

—where in a joint trial of offences triable by jury as well as assessors the Judge in writing the judgment with regard to the charges triable by himself with the assessors merely referred to the charge to the jury without giving any reasons for agreeing with the jury there was no sufficient compliance with the requirements of this section in respect of offences triable with the aid of assessors and the judgment was therefore defective, 97 I. C. 748 : 1927 Mad. 56 27 Cr. L. J. 1164.

—where the statements of the points of determination and the reasons for the decision were not prepared until three weeks after the pronouncement of the judgment in open court the provisions of this sec. were not complied with. 11 Pat. L. T. 195. 122 I. C. 531: 3f Cr. L. J. 416: 1930 Cr. C. 90: 1930 Pat. 148: 8 Pat. 904.

Punishment.

—the judgment must specify the punishment. 1884 A. W.
N. 219.

—the offences must be specified in the judgment with the same degree of particularity as the charges. 117 R. 21, 35 C. 718

evidence of murder, capital
Cr. 33, even if the accused
regnant, 15 W.R. Cr 66; if
such sentence is not duly passed, sentence must be set forth 1864 W.
R. 27, and in case of
L. B. R. 111; 3 Cr. .
determining the sentence.

—although in case of deliberate murder the major sentence shall be generally imposed, the sex or the tender age of the accused would be a good ground for passing a lesser sentence. 96 L. C. 507: 1926 Nag. 461: 27 Cr. L. J. 955

S. 367. Contents of judgment.—(contd.)

—drunkenness is neither a defence nor a palliation and is not a reason for inflicting a sentence of transportation for life instead of death sentence unless it amounts to unsoundness of mind so as to enable insanity to be pleaded or it establishes incapacity in the accused to form the intent necessary to constitute the crime. 95 I. C. 284 : 1926 Lab. 428 : 27 Cr. L. J. 761 : 7 Lah. 141.

—where the accused is convicted of an offence punishable with death the fact that he murdered his victim to escape from custody is no ground for inflicting lesser sentence. 104 I. C. 636 : 1927 Oudh 352 : 28 Cr. L. J. 860 : 4 O. W. N. 754

Omission to write judgment before sentence.

—the omission to write a judgment before an accused is sentenced is only an irregularity curable by s. 537 unless there has been a failure of justice. 81 I. C. 193 : 25 Cr. L. J. 705.

Defect in judgment.

—the defect in judgment cannot be cured by explanation submitted to the superior court. 7 C. L. J. 238 : 7 Cr. L. J. 312.

—where the charge to the jury read with the subsequent order composed a good judgment in law it was valid judgment though the order itself was incomplete. 1930 Cr. C. 153 : 123 I. C. 851 : 31 Cr. L. J. 599. 1930 Oudh. 57.

Judgment of Appellate court.

—an appellate judgment like that of the original court should contain the points for determination, the decision thereon and the reasons for the same. 81 I. C. 437 : 1923 Lab. 344, 98 I. C. 716 : 1927 Nag. 88 : 27 Cr. L. J. 1404, 92 I. O. 855 : 1927 Cr. L. J. 343 : 1926 Sind 275, 107 I. C. 665 : 29 Cr. L. J. 270.

—s. 424 Cr. P. C. read with s. 367 lays down what the contents of the judgment of any appellate court other than a H. C. should be. The judgment of the court of appeal should be such that the H. C. as a Court of Revision may on looking into the judgment be in a position to judge for himself what the case was and how far the court of appeal has considered the evidence. 39 C. L. J. 117 : 81 I. C. 820 : 25 Cr. L. J. 1041, 1923 Lah. 344.

—the judgment of the Appellate court must clearly indicate that the appeal has been properly tried and the points urged have been duly considered and decided. An Appellate court fails to discharge its duty if it writes a judgment which cannot be followed without reference to the judgment of the trial court. 1923 Lah. 863 : 110 I. C. 449 : 29 Cr. L. J. 705, 2 Lah. 308 Ref.

the appellate court is not to exercise original jurisdiction do
L. R. 3 A. 9 Cr.
independent and not sup-
court, the case of each
I. C. 177 : 1924 Lah. 680.
the case on merits. 32 C.
not actually raised at the
hearing of appeal. 24 C. 121.

S. 367. Judgment of Appellate Court—*confd.*

—it is sufficient if the appellate court has appreciated the points which the prosecution had to establish and expressed opinions thereon. 20 C. 353, 19 A. 506 F. B.

—reasons for dismissing an appeal should be given. 17 A. 211 F. B., 11 C. W. N. 135 (note), 7 C. W. N. 30, 9 C. W. N. 23 (note), 5 M. H. C. R. Ap. 12, 8 M. H. C. R. Cr. 101, 23 C. 420, 22 C. 241, 13 C. 110, 11 C. 449 8 A. 514, 1886 A. W. N. 239, 15 B. 11.

Effect of non-compliance with the provisions of the sec.

—every kind of irregularity is not cured by s. 537 Cr. P. C. Failure to comply with the mandatory provisions of this sec is material irregularity vitiating the decisions specially where there is failure of justice. 1930 Bom. 163 1930 Cr. C. 487; 32 Bom. L. R. 353.

S. 369. Court not to alter judgment.

N. B. The amended sec has limited the power of the H. C. while the wordings of the old sec admitted of the interpretation that the H. C. had unlimited powers to alter or review its judgment

—there is no inherent power of a court to revise a judgment once pronounced. 29 M. 126 F. B.

—the court cannot add or alter after it has signed and pronounced the judgment. 10 C. W. N. 1062 4 C. L. J. 210 4 Cr. L. J. 415, 1 O. W. N. 891 10 O. & A. L. R. 1323, 14 C. 42, F. B., 46 M. 282, 10 B. 176, 7 A. 672, 23 W. R. 49, 23 B. 50, 1916 P. R. 25.

—It is specially irregular when made in the absence of the accused and without notice to him. 10 C. W. N. 1062, 12 Bom. L. R. 521, 19 Cr. L. J. 225 (Pat.)

—as soon as the judgment is signed it becomes final and this court is *functus officio* and has no power to review its own judgment on the ground that there has been no formal order issued by the court or communicated to the lower court. 91 I. C. 1000; 1926 Mad. 420; 27 Cr. L. J. 184; 1926 M. W. N. 147, 50 M. L. J. 51.

—where there is jurisdiction the judgment of the H. C. is final as soon as it is signed and thereafter the court has no power to review or alter that decision 47 M. 428; 20 L. W. 18; 1924 M. 640; 46 M. L. J. 456, (14 C. 42 F. B., 10 B. 176 F. B., 23 M. L. J. 371, 46 C. 60, 46 M. 332) *fol* (2 Weir 275, 74, 672), *Ref* 22 C. W. N. 168 *doubted.*, 45 A. 143, 46 M. 382, 38 A. 134, 44 M. L. J. 27.

—where the H. C. has dismissed a criminal case for default and on the merits, the court can hear the case 69 I. C. 638 23 Cr. L. J. 750.

—the H. C. like the lower courts, can review its judgment before it is signed. 38 C. 828; 7 C. W. N. 7 (note), but the Allahabad H. C. can review its judgment after it is signed but before it is complete until it is

judgments under
principle applies.
22 B. 948.

S. 369. Court not to alter judgment—*contd.*

—an order under Chapter XII is in the nature of a judgment and a Magistrate having passed an order under s. 146 cannot alter it and pass an order under s. 147 instead. 16 O. C. 192, 19 Cr. L. J. 225 (Pat).

—a final order in maintenance proceedings (s. 483 Cr. P. C.) is in effect a judgment and the M. cannot review a final order passed in such a proceeding. 21 O. W. N. 344

—but this does not apply to an order of dismissal for default

ec. 1

merits

46 O. C.

1 N. L. R. 18

—so also an order directing issue of process under s. 204 Cr. P. C. is not a judgment and the M. can reconsider that order and cancel it. 27 O. W. N. 651.

—an order dismissing a summons case for default of appearance under s. 247 is in the nature of a judgment and a M. cannot revive the case once dismissed for default. 4 O. W. N. 26, but the M. can rehear a warrant case in which he has discharged the accused person under s. 253 or s. 259 Cr. P. C., 29 O. 726, 28 O. 652; 7 O. W. N. 527, 28 M. 310.

—according to the Madras H. C. an Appellate Court can rehear an appeal summarily dismissed for default of appearance of the pleader. 7 M. H. C. R. App 29, *contra*. 4 B. 101.

—where the Session Judge rejected a criminal appeal on the ground that it was time-barred he cannot subsequently admit the appeal. 19 B. 732; 6 Bom. L. R. 360.

—after passing a judgment and signing it the M. cannot even alter the date from which the sentence is to run. Ratanlal 804

—the Judge cannot add a note to his judgment in order to throw a doubt on the conclusion arrived at on evidence. 2 A. 33.

—where the judge tried the accused on the first charge alone and convicted him, subsequent proceedings with reference to previous conviction are not valid as he cannot review or alter the judgment. 42 B. 202.

—where the accused obtains a judgment of acquittal under s. 247 Cr. P. C. by means of fraud on the court, the court cannot rescind the judgment of acquittal on proof of fraud. 38 M. 1028.

—where a Sessions Judge in annulling a conviction on appeal omits to order a retrial he is not precluded by this sec. from passing such an order subsequently as it does not amount to an alteration of judgment. 3 M. 48.

—where a M. in disposing of a criminal appeal accidentally omits to pass an order under s. 320 Cr. P. C. he or his successor may pass the order subsequently. 43 M. L. J. 87.

—where a M. makes an order under s. 145 Cr. P. C. without any direction as to costs he may do so subsequently. 47 O. 974.

S. 369. Court not to alter judgment—contd.

—an order for further inquiry does not amount to a review of the order of dismissal or discharge. 23 C. 102, but see 5 Bur. L. T. 37.

S. 370. Presidency M's Judgment.

—this section requires that the Presidency M. should only record certain particulars and in case of conviction and sentence of imprisonment or fine exceeding Rs. 200, a brief statement of the reasons for the conviction. Failure to comply with the section strictly would constitute a mere irregularity and not an illegality if it be of no real importance. 30 C. W. N. 983; 1927 Cal. 1109; 97 I. C. 651; 27 Cr. L. J. 113f.

—no hard and fast rule is contemplated as to how that should be done. Where the word "denies" had been written in the column probably because the accused simply denied having committed the offence the entry was held to be sufficient. 56 C. 1067; 33 C. W. N. 343; 49 C. L. J. 261; 115 I. C. 604; 1929 Cal. 406; 1929 Cr. C. 30; 30 Cr. L. J. 526.

—in petty cases the decision of the Pr. M. may be written shortly. 14 C. 174.

in summary trials the reasons
C. 272, 8 C. W. N. 597, 31 C.
68 I. C. 826. 23 Cr. L. J. 602,

—in case of sentence of imprisonment a brief statement of the records of conviction should be recorded. 27 C. 461.

—if the M. omits to record the reasons the defect is not cured by s. 441. 46 M. 253.

—brevity should not be such as to tend to obscurity. 21 A. 189, 21 C. W. N. 138 (note).

—where a substantive sentence of imprisonment is passed, the Honorary Presidency M. must record the reason for the conviction. 46 M. 185; 44 M. L. J. 84; 71 I. C. 212; 24 Cr. L. J. 84.

—a conviction should be set aside if the conviction-sheet does not contain any record of the examination of the accused under s. 227(2) or (3) or the examination for the conviction.

—a person without giving a statement before the H. C. should
interfere.

S. 374. Sentence of death to be submitted by court of Sessions.

under this section the sentence must be submitted before the H. C.

—in a reference under this section it is the duty of the H. C. to be satisfied that the finding of fact is justified by the

S. 374. Sentence of death to be submitted by court of Sessions—*contd.*

evidence on the record although the jury have been unanimous in convicting the accused for murder. 30 C. W. N. 166; 92 L. C. 890; 27 Cr. L. J. 378.

—death sentence passed by the Session Judge on the unanimous verdict of the jury was set aside by the H. C. on the ground that the prosecution evidence could not be believed and confession was not genuine. 32 C. W. N. 702; 29 Cr. L. J. 833; 111 L. C. 385.

—the law naturally makes full provision for the undoubted fact that a capital sentence differs from all others in being irrevocable after it has been carried out and if the matters to be considered under s. 423 are left out there is nothing left for consideration under s. 376 except the one matter whether the certainty of guilt is sufficient in excess of the minimum certainty required by s. 3 of the Evidence Act, to remove the danger of the carrying out of the sentence on an innocent person. 95 L. C. 59; 1926 Nag. 368; 27 Cr. L. J. 731.

—in a case of reference the questions of misdirection are of less importance because the H. C. has to come to an independent conclusion as to the guilt or innocence of the accused independently of the verdict of the jury or the opinion of the Sessions Judge. 47 C. L. J. 240; 32 C. W. N. 345; 109 L. C. 482; 29 Cr. L. J. 516; 1928 Cal. 430. 10 A. I. Cr. R. 259.

S. 375. Power to direct further enquiry to be made or additional evidence to be taken.

—the H. C. can under this section take further evidence and
25 B. 163, and can inspect
1911 P. W. R. 16.

H. C. can dispense with

at all events for the purpose of discrediting the witnesses when the discrepancies in the testimony of those witnesses have been properly dealt with by the trial Judge. 44 C. 876. P. C.

S. 376. Power of H. C. to confirm sentence or annul conviction

—the H. C. will not generally allow the verdict to be attacked arbitrarily. It is necessary that the convict must show *prima facie* that the verdict is unsupported by evidence. 15 S. L. R. 103 F. B.

—the H. C. is bound under
as the law of the case although the
of the jury. 19 W. R. Cr. 57, 2 C.

—but this rule will not apply in hearing the appeal of a co-accused not sentenced to death, along with reference under s. 374, in case of person sentenced to death. 2 C. W. N. 49.

—the H. C. may also consider whether the conviction was by a court of competent jurisdiction. 2 A. 218.

S. 378. Power of H. C. to confirm sentence or annul conviction—*contd.*

—where there was the chance of decapitation owing to an aperture in the neck of the convict communicating with the larynx, 2 C L. R. 215, and where the capital sentence have been hung over the head of the convict for six months owing to the delay in the H. C. 17 C W N 1213, the H C. commuted the sentence of death into one of transportation

—the H. C. may convict for minor offence. 1913 P. R. 8; *contra*. 1 B 639.

—the H C. ordered retrial when further evidence was necessary, 6 C W N. 921, and when the accused was undefended 19 C. W. N. 556

S. 378. Procedure in case of difference of opinion.

—it is the duty of the third judge to express and set upon the opinion at which he has himself definitely arrived 187 A. W N. 125, 1886 A. W. N 375 *overruled*.

S 380. Procedure in cases submitted by M. not empowered to act under s. 562.

—where proceedings are submitted to first class M under s. 562, and he passes sentence under this sec the conviction must for the purposes of appeal, be considered to be within the meaning of sec 408 and the order is appealable to the S J 16 Cr L. J. 738.

S 382. Postponement of capital sentence on pregnant woman.

—the fact of the accused being a pregnant woman is not sufficient ground for commutation of sentence 15 W. R 66

—the H. C. alone can postpone the execution of capital sentence conferred on woman found to be pregnant 2 Weir 441.

S. 383. Execution of sentence of transportation or imprisonment in other cases.

—the Judge convicting the accused must pass sentence on him at once, he cannot adjourn the passing of sentence for an indefinite period 14 Bom L R 144

—the sentence should commence from the time it is passed unless there is some lawful reason to order it to commence at some future period 12 W. R Cr. 47.

—admitting the accused to bail for appealing does not make the sentence one to commence at future date and does not make it illegal. 7 C L R 393 12 W. R 47.

—a sentence of imprisonment until the rising of the court is legal. 9 P. W. R. 1907: 5 Cr. L. J. 217, 7 Cr. L. J. 153: 4 L. B. R. 152

—the commencement of the sentence cannot be ante-dated, 1907 P. W. R. 9

—it is illegal to confine a person in a jail other than that mentioned in the warrant, 11 C 527 and a jail does not include a police lock-up. 7 L. B. R. 62.

S. 383. Execution of sentence of transportation or imprisonment in other cases—*contd.*

—the H. C. should send the accused to the jail in which he would have been confined by the Court submitting the case. 29 C. 286.

S. 384. Direction of warrant for execution.

—separate warrant should be issued in case of each prisoner. 8 C. 644.

—the warrant of imprisonment must be signed by the M. and the signature should be affixed by pen and not by means of a stamp. 6 M. 396.

—it is illegal to confine a convict in a jail other than that mentioned in the warrant. 11 C. 527.

—the period of imprisonment should be definite. 8 C. 644.

S. 386. Warrant for levy of fine.

The whole section has been redrafted.

—the words "belonging to" include the share of the offender in a Hindu joint family estate. So a maintenance order under s. 488 Cr. P. C. can be executed against the property belonging to the offender even if such property consists of a share in a joint family. 49 B. 906; 27 Bom. L. R. 1363; 94 I. O. 604; 27 Cr. L. J. 653; 1926 Bom. 103.

—the immovable property of an agriculturist can be attached and sold in execution of an order passed under this section. 99 I. C. 310; 1926 Bom. 582; 28 Bom. L. R. 1231.

—under this sec. and s. 16 of the Punjab Land Alienation Act the land belonging to a member of an agricultural tribe cannot be sold in pursuance of a warrant issued by a M. to the Collector and sent to the nearest Civil Court for execution. 1929 Lah. 667; 119 I. C. 227; 1929 Cr. C. 212; 30 Cr. L. J. 1006.

—before the issue of warrant the court should have sentenced the offender to pay a fine. 10 Pat. L. T. 124; 116 I. C. 524; 30 Cr. L. J. 635; 1929 Pat. 108.

S. 390. Execution of sentence of whipping.

—it should not be postponed. 26 M. 465, Rat. Un. Cr. 906, 29 W. R. Cr. 72, 6 M. H. C. R. App. 38.

—it cannot be said that the sentence of whipping must be executed on the very day that the sentence is passed. Where the sentence of whipping was passed late in the day and the next day was a Sunday, it could be executed on the Monday. 1928 Bom. 138; 30 Bom. L. R. 389; 29 Cr. L. J. 573; 109 I. C. 509.

S. 391. Execution of sentence of whipping in addition to imprisonment.

—the sentence of whipping may be postponed until 15 days from the date of sentence or until confirmation of the sentence on appeal but not till after the term of imprisonment has expired. 6 M. H. C. R. App. 38, 4 Bom. L. R. 436, 929, 7 M. H. C. R. App. 22, 1881 A. W. N. 138 Rataclal 803, 20 W. R. 72.

S. 391. Execution of sentence of whipping in addition to imprisonment—*contd.*

—the whipping must be carried into effect as soon as practicable after the expiry of the time specified in the section. Ratanlal 136.

—a double sentence of whipping cannot be passed. Ratanlal 955.

—when a sentence of less than three months is awarded, an additional sentence of whipping is illegal. 2 Bom. L. R. 54.

S. 393. Sentence of whipping not to be executed by instalments, exceptions.

—sentence of whipping passed on a person who is already under the sentence of death is illegal. 1 M. 56

—the provision of sec. 393 (b) against whipping refers to the persons who have five years. 3 Lah.

—a person sentenced to 7 years' rigorous imprisonment cannot be sentenced to whipping in addition. 1919 P. R. 30

—a person who is sentenced in two different cases and the punishments collectively exceed the term of seven years cannot be punished with whipping. 120 I. C. 697 1930 Itang. 138 : 30 Cr. L. J. 176 : 1930 Cr. C. 305.

—a sentence of whipping cannot be enhanced by the infliction of an additional number of stripes. Ratanlal 537

S. 395. Procedure if punishment cannot be inflicted under s. 394

—"wholly prevented" refers to sub sec. (1) of s. 394 and "partially prevented" refers to sub-sec. (2) of that section. 31 M. 84.

—the only court that can revise the sentence is the court which passed the sentence, 1889 P. R. 10 but the words "the court which passed the sentence" do not mean the same officer who inflicted the sentence. 1901 P. R. 33.

—the court can revise the sentence of whipping by awarding solitary confinement in lieu of whipping. 1899 P. R. 14

—the imprisonment which the court can award under this section must not exceed the term which the court is competent to award. 2 Weir 449, 1091 P. R. 11, 21 25

S. 396. Execution of sentences on escaped convicts.

—this section contemplates that the severer sentence must be undergone first. Ratanlal 965

—the word sentence includes an order of imprisonment passed under s. 123. Ratanlal 774 *contra*, 2 L. B. R. 72.

S. 397. Sentence on offender already sentenced for further offence

—there was dispute as to whether the section included imprisonment awarded under s. 123 for failure to give security, this has been

S. 397. Sentence on offender already sentenced for further offence—contd.

Not at rest by the new amendment which runs thus:—“provided further, that where a person who has been sentenced to imprisonment by an order under sec. 123 in default of furnishing security is, whilst undergoing such sentences, sentenced to imprisonment for an offence committed prior to the making of such offence, the latter sentence shall commence immediately” and the amendment has also provided that the sentence will run concurrently.

—it is competent to a M. in British India to pass a sentence of an offence committed in India, which should take effect after the expiration of the sentence which the accused is undergoing in foreign territory. 20 M 414

—when a person was convicted in two distinct trials by two different courts, and on appeal the conviction in one of the cases was set aside, the imprisonment undergone should be reckoned as imprisonment under the sentence not reversed. 2 Weir 450.

—an order under this sec. is not a part of the judgment, so it can be made after the judgment is signed. Rat. Up. Cr. 391: 3 W. R. 16.

—concurrent sentences on separate trials on the same day is legal 3 Bur L. J. 32 25 Cr. L. J. 1310: 82 I. C. 478.

—when the accused are sentenced under ss. 457 and 411 and they are sentenced with other accused under s. 401 of the I. P. C. on the same day in separate trials, the sentences can be ordered to run concurrently 95 I C 471: 1926 Nag 426. 27 Cr. L. J. 807.

S. 399. Confinement of youthful offender in reformatories.

—period of detention in the Reformatory School should be a definite period, and that the alternative period of time expressed in the words “or until he attains the age of eighteen years” should be deleted, 15 Bom L R 306: 2 Bom. Cr. C. 57: 19 Ind. C. 512: 14 Cr. L. J. 256, 24 M. 13 Fof

S. 400. Return of warrant on execution of sentence

—where in respect of the offence under s. 411 I. P. C. an accused has been convicted by the Courts of a Native State, he cannot on the same facts again be convicted in British India. 73 I. C. 939: 24 Cr. L. J. 715

S. 403. Persons once convicted or acquitted not to be tried for same offence.

Scope of this section.

—this section amplifies the well known maxim “*Nemo debet bis vexari*”. This principle does not rest on any doctrine of estoppel but embodies the well-established rule of common law that a man may not be put twice in peril for the same offence. 29 M. 126 F. B. 1928 Rang. 252: 6 Rang. 366: 111 I C. 850.

—the wording of this section is very wide and the jurisdiction of the court does not merely refer to the character and status of

S. 403. Scope of this section—*contd.*

the court to try the offence but also to want of jurisdiction on the grounds as shown by Ills. (f) and (g). 95 L. C. 929; 27 Cr. L. J. 849; 7 Pat. L. T. 353; 1926 Pat. 302.

—under this sec. on the same facts a plea of "*autrefois acquit*" cannot be sustained for a different offence unless the requirements of s. 403 (1) are fulfilled. Conversely the plea in similar circumstance cannot be defeated except under sub-sec. (2) 1928 Rang. 252; 6 Rang. 356 111 L. C. 850

—the accused can set up the plea of "*autre fois acquit*" at any state of a proceeding and the real test to determine if he can succeed on the plea is whether the evidence is the same in both the cases. 1928 Pat. 577; 110 L. C. 792; 29 Cr. L. J. 760, 117 L. C. 625; 30 Cr. L. J. 806; 1930 Cr. C. 2 1930 Pat. 26

—the principle of "*autrefois acquit*" does not apply to fresh prosecution on facts wholly different from those of previous prosecution. 106 L. C. 339 29 Cr. L. J. 3 29 Punj. L. R. 52.

"Tried by a court of competent jurisdiction for an offence"

—this sec. refers only to a second trial and bars it, if it comes within its terms. It does not affect the powers of courts of appeal or Revision, as those proceedings are only a continuation of the same trial. 23 C. 975, 27 C. 172, 22 C. 377.

—this sec. does not apply to proceedings under s. 107 an order under s. 107 is not bad because a previous order under s. 145 was made relating to the same dispute. 36 M. 315

—a dismissal of previous application for maintenance is no bar under this sec. to a second petition. *Res Judicata* does not bar any proceedings by general principles but only by special enactments as contained in sec. 12 of the C. P. C. and s. 403 of the Cr. P. C. 14 Bur. L. R. 259 4 L. B. R. 337; 9 Cr. L. J. 21.

—order of acquittal in a case where there was no complaint by proper person is no bar to a subsequent trial when the complaint is lodged by proper person. 31 A. 317; 6 A. L. J. 262; 9 Cr. L. J. 526; 2 Ind. C. 219, 9 A. 134 F. B. Ref., 17 Bom. L. R. 678 16 Cr. L. J. 657; 30 Ind. C. 641.

—the order of acquittal in a regularly conducted case would be a bar to further proceedings even though no formal charge had been framed. 3 A. 129

—to apply this sec. some final order of conviction or acquittal must have been passed in the previous trial. 5 B. 405.

—it is only when an accused has been "tried" and acquitted of an offence that the immunity arises. 30 C. W. N. 382; 43 C. L. J. 110; 95 L. C. 79; 1926 Cal. 691.

—in a summons case when the accused appears and answers to the charge he is said to be "tried" although the case is dismissed owing to non-appearance of the complainant. 2 Weir 457, but the acquittal in a summons case is no bar in regard to an offence triable only as a warrant case. 1886 A. W. N. 260.

S. 403. "Trial by a court of competent jurisdiction for an offence"—*contd.*

—where in a summons case the accused is not present on the date of hearing nor does the being served upon him and an order of prosecution is barred. 5 Pat. L. T. 10. 1924 Pat. 140, 34 M. 258 11084
fol. 36 M. 315 *Dist.*

—an acquittal under s. 247 Cr. P. C. bars a further trial. 33 C. W. N. 260; 49 C. L. J. 119; 116 I. C. 174; 30 Cr. L. J. 585; 1929 Cal. 189.

—if the trial is void *ab-initio* for want of jurisdiction in the M. it cannot be called a trial and a discharge by the appellate court without an order for trial by the proper court does not bar fresh proceedings in proper court. 29 C. 412 P. 414, 31 A. 317, 6 W. R. Cr. 13, 22 B. 711, 3 M. 48, 8 B. 307, so a dismissal for want of necessary sanction is no bar under this sec. 24 M. 337, 22 B. 711

—subsequent charge being with respect to an offence which the first M. could not try, the previous acquittal was no bar to a subsequent proceeding. 18 Cr. L. J. 643, 23 C. W. N. 518; 29 C. L. J. 30, 19 Cr. L. J. 388, 48 M. L. J. 490; 48 M. L. J. 490; 88 I. C. 31; 26 Cr. L. J. 1087; 1925 Mad. 711.

—where the Bench Magistrates had no jurisdiction to deal with the offence of adultery, an acquittal by them was no bar. 1928 Bom. 530; 30 Bom. L. R. 1435; 53 B. 69; 113 I. C. 70; 30 Cr. L. J. 54.

—acquittal on the ground that the requisite sanction had not been obtained does not bar a second trial with sanction. 30 C. W. N. 382; 42 C. L. J. 110; 95 I. C. 79; 1926 Cal. 691, 7 P. L. T. 383; 85 I. C. 929; 1926 Pat. 302, 94 I. C. 897; 1926 All. 231; 27 Cr. L. J. 705, 37 A. 107, 1929 All. 840; 1929 Cr. C. 668.

—subsequent trial with respect to the same facts is barred even against other accused who were not tried previously, 7 C. W. N. 493, 4 C. W. N. 345, but if there are certain additional facts before the court, ascertained subsequent to the acquittal, subsequent trial against other accused is not barred 10 C. W. N. 1031; 4 Cr. L. J. 173.

—a person acquitted of an offence under s. 193 I. P. C. cannot be proceeded against under ss. 467 and 471 read with s. 120 B. I. P. C. on facts wholly inseparable from the facts of the prior prosecution. 30 C. W. N. 334, 1926 Cal. 450; 87 I. C. 847; 26 Cr. L. J. 1023.

—several Police constables were convicted of the offence of which they were previously tried —

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S. 403. "For the same offence, nor on the same facts for any other offence &c."—*contd.*

be tried again for the same offence, but also where he is sought to be tried on the same facts for any other offence for which a different charge from the one made against him might have been made on the same facts under s. 236, or for which he might have been convicted under s. 237 Cr. P. C. 36 M. 308; 24 M. L. J. 463; 13 M. L. T. 360; 19 Ind. C. 310; 14 Cr. L. J. 214, 48 M. L. J. 490, 107 I. C. 766; 29 Cr. L. J. 282; 1928 Lah. 332.

—in a charge of cheating, the complainant must disclose all the evidence of deception at the first trial; different cases cannot be instituted each being based upon different evidence of deception. 99 I. C. 1035; 1927 Mad 444; 28 Cr. L. J. 235.

—to be a bar under this sec. the offence must be the same, 7 W. R. Cr. 15, 23 C. W. N. 543, 599.

—want of evidence in the previous case cannot limit the operation of this sec. 24 M. 284, 1 Bur. L. R. 15, 3 B. J. R. 253; 5 Cr. L. J. 412

—acquittal of an offence under s. 193 I. P. C. bars prosecution under ss. 467 and 471, read with s. 120 I. P. C. on facts wholly inseparable. 87 I. C. 847; 26 Cr. L. J. 1023 (C)

—separate trials and convictions under ss. 160 and 323 I. P. C. were not barred. 86 I. C. 64; 1925 A. 299; 23 A. L. J. 8.

—trial under s. 121-A. for conspiracy bars a second trial under ss. 302, 120-B. on the same facts. 82 I. C. 169; 25 Cr. L. J. 1241; 1925 Lah. 157.

—an acquittal under s. 247 Cr. P. C. operates as a bar under this sec. 4 Pat. L. T. 15; 74 I. C. 719.

—different charges of theft and mischief arising out of the same facts are barred. 8 M. 296, 1 Weir 497.

—an acquittal under s. 160 I. P. C. is a bar to a subsequent trial under s. 61 (O) of the Bombay District Police Act. 106 I. C. 216; 28 Cr. L. J. 1032; 9 A. I. Cr. R. 187.

—where the accused was convicted for contempt of court for beating another in the presence of the Magistrate, subsequent charge on the same facts for an offence under s. 355 I. P. C. was valid as the Presiding Magistrate was incompetent to try the accused for that offence. 117 I. C. 625; 39 Cr. L. J. 806; 1930 Cr. O. 2; 1930 Pat. 26.

—where a person was acquitted of offences under ss. 380 and 411, he could not be tried under s. 54 A. of the Calcutta Police Act in respect of the same act. 22 C. W. N. 199; 45 C. 727.

—where the goods which formed the subject of a charge under ss. 407, 411 and 414 I. P. C. and of a charge under s. 51 A. Calcutta Police Act were identical, the accused should have been tried for all these offences at one trial. 1928 Cal. 240.

—prior conviction for rash driving under s. 5 Motor Vehicles Act bars a subsequent prosecution for causing grievous hurt under s. 279 I. P. C. 26 A. L. J. 160; 107 I. C. 687; 29 Cr. L. J. 271; 1928 All. 191.

S 403. "For the same offence, nor on the same facts for any other offence &c."—*contd.*

—prior conviction for assault committed by the accused, under the Railway Act bars subsequent prosecution under s. 323 I. P. C. for the same offence 33 C. W. N. 948: 1930 Cr. C. 12: 1930 Cal 60

—an acquittal for an offence under s. 324 I. P. C. does not bar a trial for an offence under the Arms Act. 53 B. 604: 31 Bom. L. R. 536 1929 Bom 283: 30 Cr. L. J. 1059

—unless order of acquittal under s. 147 I. P. C. is set aside no order of further inquiry in an offence under s. 323 I. P. C. can be passed. 5 C. W. N. 72.

—when the common object in both the offences was the same, a second trial under a different sec. was barred 17 C. W. N. 948.

—an acquittal on a charge of abduction of a woman does not bar a subsequent trial for subsequent detention of the woman, 4 Lah. L. J. 488

—conviction under s. 160 I. P. C. was bar to a conviction under s. 323 I. P. C. 47 A. 384: 1925 All. 299: 86 I. C. 64. 26 Cr. L. J. 688.

—but an acquittal or conviction on a minor offence is not a bar to a trial on a major offence. 7 M. 557, 5 Bom. L. R. 125, Rat. Un Cr. 337, 3 P. R. 1901 Cr. 7 P. R. 1912: 39 P. W. R. 1912 Cr.: 13 Cr. L. J. 742: 17 Ind. C. 54, 23 C. W. N. 518, 20 Cr. L. J. 43.

—when an accused is summoned for one of several offences alleged against him and is acquitted of the offence for which he is charged no fresh process can be issued against him in respect of the other offences alleged. 2 C. L. J. 622: 3 Cr. L. J. 115, (15 C. 608: 29 C. 726) Dist.

—an accused was tried under ss. 366, 368, 376 I. P. C. and was acquitted. On complaint of the husband the accused could not be tried under s. 498 on the same facts. 16 Cr. L. J. 657.

—a conviction for an offence under s. 160 I. P. C. on prosecution initiated by the Police against both the accused and the complainant in which both were fined does not bar a prosecution of the accused for offences under ss. 323 and 147 I. P. C. on the

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—but where the Jt. Dr. escaped from the custody of the Amin after arrest and upon the complaint of the degree-holder the accused was acquitted on the ground that the complaint was incompetent the acquittal was a bar to a complaint by the 58 M. L. J. 579: 31 L. W. 755.

S. 403. "For the same offence, nor on the same facts for any other offence &c."—*contd.*

—when the accused was charged of offences under ss. 211 and 500 I. P. C. and was convicted under s. 500 subsequent proceeding under s. 211 I. P. C. was not maintainable. 1929 All. 899 : 1929 Cr. C. 491 : 119 I. C. 575 : 1929 A. L. J. 1056 : 51 A. 977.

When the facts are different.

—where the facts are different subsequent trial is not barred. 31 C. 1007, 1905 A. W. N. 238 : 2 A. L. J. 673 : 2 Cr. L. J. 790, 12 Bom. L. R. 226

Any other offence for which a different charge might have been made etc.

—a bar under s. 403 operates not only where a person has been tried for an offence and convicted or acquitted of it and is sought to be tried again for the same offence, but also where he is sought to be tried on the same facts for any other offence for which a different charge from the one made against him might have been made on the same facts under s. 236, or for which he might have been convicted under s. 237 Cr. P. C. 36 M. 308 : 24 M. L. J. 463 : 13 M. L. T. 360 : 19 Ind. C. 310 : 14 Cr. L. J. 214, 48 M. L. J. 490.

—s. 403 protects an accused only against a trial for murder and any other offence for which a different charge from the one made against him "might have been made." 18 C. W. N. 723 : 41 C. 1072 : 15 Cr. L. J. 460 : 24 Ind. C. 340.

—if the accused had been charged with murder alone a verdict of not guilty would have protected him from another trial for culpable homicide and where he was acquitted of culpable homicide he would be protected from trial for any offence involving hurt ; but where a charge was made the case fell outside the provisions of the law dealing with cases where it might have been made. Under the facts of the case the accused was not being tried again but was, for the purposes of sec. 403, being tried on the original indictment and on his first plea of not guilty. *above case.*

—where a person has been tried for a specific offence and has been acquitted, his acquittal is conclusive and it would be a very dangerous principle to regard a judgment of not guilty as not fully establishing his innocence. He cannot be subsequently charged with conspiracy of which that offence is alleged to form a part. 38 C. 559. Sp. B.

—trial and acquittal of an accused on a charge of criminal breach of trust is a bar to subsequent trial for falsification of account as the charges were virtually the same. 49 C. 924 : 72 I. C. 973.

—conviction for an offence under s. 91 (B) of the Companies Act does not bar a subsequent trial for criminal breach of trust on the same facts in as-much as no alternative charge was possible in the proceedings under s. 91 (B) of the Companies Act. 118 I. C. 650 : 11 Lab. L. J. 384 : 30 Cr. L. J. 954.

S. 403. Any other offence for which a different charge might have been made etc.—*confd.*

—the acquittal of a person on a charge of abduction does not bar a trial for detaining the same person. 74 I. C. 444; 24 Cr. L. J. 780.

—where a person is charged with forgery and its abetment and is acquitted he cannot afterwards be tried for an offence under s. 82 Registration Act, 1 Rang. 219, but previous acquittal for want of sanction does not bar such subsequent case. 64 I. C. 142.

—an accused acquitted of an offence under s. 274 I.P. C. cannot again be tried for the same offence on the same facts. 1923 A. 360.

—where the prosecution is respect of gross sum misappropriated was withdrawn subsequent prosecution for the misappropriation of specific sum within the period covered by the previous charge is not barred. 50 C. 631; 27 C. W. N. 578, 38 C. L. J. 286; 76 I. C. 310; 25 Cr. L. J. 156.

—where the prosecution was fully aware of the gross sum misappropriated and instead of proceeding against the accused for the entire amount elected to proceed on some of the items and subsequently launched a second prosecution for criminal breach of trust regarding certain other items the second conviction was not illegal though it was not desirable to launch different prosecution. 49 C. L. J. 378; 33 C. W. N. 454; 1929 Cal. 457; 1929 Cr. C. 91; 57 C. 17.

—where a person is found to be in possession of, on the same date, of several articles of stolen property and is tried in respect of
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 37 C. L. J. 326; 27 C.

—a person convicted under s. 411 I. P. C. in respect of certain property stolen on a particular occasion cannot be tried on for an offence under s. 414 I. P. C. in respect of some other property stolen on the same occasion from the same person. 28 A. 313, 15 A. 317.

—where the accused was first tried on a charge of abetment of forgery of a document under ss. 467 and 409 and was acquitted by the court, he could subsequently be tried in respect of the same document, for using as genuine a forged document under s. 471. 17 Bom. L. R. 881; 3 Bom. Cr. C. 93; 40 B. 97.

—where the accused has already been prosecuted in respect of part of the properties and convicted or acquitted he cannot be again put on his trial in respect of another lot of the properties though these may have been the subject-matter of different theft. 5 Pat. L. T. 319; 81 I. C. 226; 25 Cr. L. J. 738 (15 C. 511, 15 A. 317, 27 C. W. N. 554, 8 C. W. N. 1027.) *Ref.*

—a person acquitted in a case under s. 427 (mischief) cannot be tried for an offence under s. 147 (rioting) on the same fact. 19 L. W. 11; 1924 M. W. N. 153; 25 Cr. L. J. 244; 76 I. C. 708.

—an accused tried for an offence of abetment of theft and acquitted cannot be tried again for receiving stolen property as he could be tried for the latter offence at the first trial. 26 Bom. L. R. 440; 7 Bom. Cr. C. 160; 1924 B. 443.

S. 403. Any other offence for which a different charge might have been made etc.—*contd.*

—the accused who has been once acquitted is entitled to produce the order of acquittal in order to plead under this sec. and the trying court cannot question the competency of the court which passed such order 8 A. L. J. 1129. 12 Cr. L. J. 575 : 11 Ind. C. 839.

Sub-sec. (2) "Distinct offence for which a separate charge might have been made."

—"distinct offence" means an offence entirely unconnected with a former offence charged. 1928 Rang. 152; 6 Rang. 386; 111 I. C. 850.

—a previous conviction for being in possession of counterfeit coins under s. 213 I. P. C. does not bar subsequent trial under s. 210 I. P. C. for passing other coins knowing them to be counterfeited as they are distinct offences 31 C. 1007.

—an accused may be tried on a charge of abetment of forgery of a document and again for using the same document as genuine. 40 B. 97.

—the conviction for an offence under s. 352 I. P. C. is no bar to a separate charge under s. 147 I. P. C. 4 P. L. W. 21.

—separate charges for offences constituting a single transaction is not barred by this sec. A. W. N. 1905, 238; 2 A. L. J. 673; 2 Cr. L. J. 790.

—an acquittal under s. 400 I. P. C. does not bar the trial under s. 395 I. P. C. 1 Bom. L. R. 15.

—where certain persons carried off a woman after beating the inmates of the house and on the first trial were charged under ss. 452 and 325 I. P. C. and convicted, they could be tried for abduction under s. 365 I. P. C. 2 A. L. J. 2.

—where the accused threatened three persons (witnesses) the trial and conviction for threatening one does not bar a second trial and conviction for threatening the other two. 9 W. R. 30.

—where the two offences are quite distinct and are committed against distinct persons s. 403 is no bar to a second trial. 1929 All. 940; 1929 Cr. C. 668; 120 I. C. 121; 1930 A. L. J. 218.

—where two persons instituted a joint complaint against an accused but the transaction out of which the complaints arose were different and independent and separate complaints ought to have been presented and one of the complainant compounded the case with the

judicial inquiry.
1930 A. L. J.
1930 All. 92,
A. 129) Ref.

—where the complaint was under ss. 352 and 504 I. P. C. and process was issued under s. 352 only and the M. acquitted the accused of the offence under that section but ordered process to issue under s. 504, held that the re-trial was not barred. 20 Cr. L. J. 43 (Cal).

—conviction under the Excise Act, does not bar subsequent trial under the Merchandise Mark Act, 23 C. 174. . . .

S. 403.—Sub-sec. (3)—Different offences constituted by consequences happening subsequently.

—where certain police constables were first tried for wrongful confinement under s. 342 I. P. C. and were acquitted they could be subsequently convicted of rioting under s. 147 I. P. C. 49 C. 74.

—where in a case of criminal breach of trust the subject matter of the subsequent charge is not included in the subject matter of the previous charge for the same offence, the subsequent trial is not barred. 30 C. 632.

—but a person acquitted of an offence under ss. 201 and 202 I. P. C. cannot be tried again for an offence under s. 176 I. P. C. based on the same facts. 10 C. W. N. 518.

—conviction of an offence under s. 379 I. P. C. for having taken away opium from an opium factory does not bar a subsequent prosecution for an offence under s. 9 Cl. (c) of the Opium Act; the same facts as the facts to be proved for an offence under the Opium Act were quite distinct. 48 A. 426; 1926 All. 404; 27 Cr. L. J. 767; 96 I. C. 287.

—acquittal under s. 160 I. P. C. bars a subsequent trial under s. 61 (e) of the Bombay District Police Act. 29 Bom. L. R. 1478; 1927 Bom. 629.

—trial and conviction under s. 63 of the Calcutta Police Act, of 1866 bars a fresh trial under s. 103 (iv) of the Indian Merchant Shipping Act, 1923. 31 C. W. N. 195; 99 I. C. 1033; 1927 Cal. 224; 28 Cr. L. J. 283.

—the new facts or circumstances must have occurred since the conviction or acquittal at the first trial, 36 A. 4; 1901 P. R. 3, and must be such as to indicate a different kind of offence of which there could be no conviction therein. 8 Bur. L. T. 129.

—but if the new facts or consequences were known to the Court at the time of first trial a subsequent trial for an offence constituted by those new facts would be barred. 9 N. L. R. 26.

—but where the second offence is not completed till the acquittal in the first trial, second trial is not barred. 4 Bom. L. R. 57.

Sub-sec (4)—“was not competent to try.”

—this expression means “had not the jurisdiction to try,” so when an accused is acquitted by S. J. aided by assessors he cannot subsequently be convicted by the S. J. and a jury. 24 M. 641.

—the words “competent to try” are equivalent to “in a legal position to have tried and acquitted or convicted,” that is to say, the words refer narrowly to the legal position of the court at the time of the former trial in relation to the particular offence committed and not broadly to the class in general. 117 I. C. 625; 30 Cr. L. J. 806; 1930 Cr. C. 2; 1930 Pat. 26.

—second prosecution on the same facts is not barred if the court by which the accused was first tried and acquitted was not competent to try the offence subsequently charged. 48 M. L. J. 490; 1927 Cal. 224; 18 Cr. L. J. 643; 23 C.

388, 117 I. C. 267; 30 Cr. L. J.

S. 403.—Sub-sec. (4)—“was not competent to try”—contd.

—where the accused was proceeded against first on a complaint for an offence under s. 173 I. P. C. and subsequently for an offence under s. 174 I. P. C. on the same set of facts, but both the complaints were dismissed under s. 213 Cr. P. C. a third complaint was sustainable on the same set of facts for an offence under s. 174 I. P. C. at the instance of a proper party. 52 B. 257; 30 Bom. L. R. 380, 109 I. O. 481; 1928 Bom. 143; 29 Cr. L. J. 545.

—s. 403 refers to the character and status of the tribunal when it refers to competency to try the offence as shown by (f) and (g). A sanction under s. 195 is not a condition of the competency of the tribunal, it is only a condition precedent for the institution of proceedings before the tribunal. 36 M. 308; 24 M. L. J. 463; 19 I. O. 31.

Explanation.

—the Code is exhaustive on the subject of *autrefois acquit* and it is not permissible to add to its provisions. 31 M. 543; but Subramanya Ayyar, J. in a dissentient judgment is of opinion that this explanation does not bar resort to a plea analogous to *autrefois acquit* in cases where such plea ought to be allowed on grounds of justice. 29 M. 126. F. B.

—s. 403 embodies the general rule which affirms the validity of pleas of *autrefois acquit* and *autrefois convict*, subject only to the exception specified in it. Where a prosecution is withdrawn after a charge has been framed and it results in an order of acquittal made under s. 494 Cr. P. C., that is a valid acquittal to which s. 403 applies. 9 N. L. R. 26; 18 Ind. C. 887; 14 Cr. L. J. 135, 40 M. 976; 19 Cr. L. J. 301.

—an order under s. 249 stopping the proceedings of a trial has been specifically included by the explanation from being an order of acquittal. 1913 P. R. 9, 4 B. L. R. A. C. 1.

—a stay of trial under s. 240 does not amount to acquittal. 1889 A. W. N. 8.

—s. 403 has no application to a case in which the accused is discharged. 17 A. L. J. 867.

—a M. is competent to rehear a case when the accused is discharged. 28 C. 211, 652 F. B., 29 C. 726 F. B., 1 C. W. N. 49, (4 C. W. N. 26, 46), Diss.

—an order under s. 494 (a) is an order of discharge of the accused and under the circumstances of the case fresh complaint was not barred. 1924 P. 797.

—when the prisoner is released by the appellate court on the ground of illegal or irregular procedure in the Lower Court, retrial is not barred. 13 W. R. 42; So also when the prisoner is discharged on the ground of want of jurisdiction of the Lower Court. 29 C. 412, 3 M. 48.

—when a person is discharged under s. 119, fresh proceedings may be drawn against him. 33 M. 85.

—an order of discharge under s. 333, on a *nolle prosequi* is no bar to fresh proceeding. 16 C. W. N. 983.

S. 403. Explanation—contd

—but although a second complaint is entertainable still unless very strong grounds are shown (i.e. discovery of new facts etc.) a person who has been once discharged should not be harassed on the same charge. 16 Cr. L. J. 329 (M.)

Power of the H. C. to order retrial.

—this sec. is no bar to the power of the H. C. to order retrial as that is in continuation of the original trial. 37 M. 119; 22 Ind. C. 757, 15 Cr. L. J. 180, 34 M. 545, 21 M. L. J. 805, 10 M. L. T. 66, 35 M. 243, 23 C. 975, 22 C. 377, 12 Cr. L. J. 269.

S. 404 Unless otherwise provided no appeal to lie. When appeal does not lie.

—the Local Government and not the H. C. can appeal against acquittal. 6 C. L. R. 215, 19 W. R. 55, 14 M. 369, 3 B. 150, 22 C. 164. Such appeal lies only to the H. C. 20 C. 633, 2 C. W. N. 256 (note).

—the Government should sparingly use the power given by s. 417 Cr. P. C. 26 Bom. L. R. 113, 21 B. 1054.

—the H. C. will not even revise the order of acquittal except at the instance of the Local Government. 15 B. 349, 6 C. L. R. 245, 5 N. L. R. 4, 15 S. L. R. 171, 1 L. B. R. 356.

—only the Public Prosecutor can file an appeal under s. 417 Cr. P. C. and a Legal Remembrancer is a Public Prosecutor within this s. 23 C. W. N. 96, 46 C. 544, but not of other provinces. 41 C. 425.

—the Local Government has no right of appeal against an acquittal in a case tried by jury when the questions involved are pure questions of fact. 26 C. W. N. 558, 10 C. 1029, 16 A. 212; (1894) A. W. N. 49, 21 W. R. 55, 14 M. 363, 22 C. 164, 18 C. W. N. 666, 21 A. 122, 1 Cr. L. J. 1022, 2 L. B. R. 303 *Ref.* 17 C. P. L. R. 75 *Diss.* nor against an interlocutory order. 16 B. 414.

—it is not open to the Government to appeal to the High Court on the ground of the Sessions Judge's refusal to add new charges. 16 B. 414.

—an appeal by Government should not be entertained when the judgment appealed from is based on facts, and conclusions of the Court are such as may reasonably be arrived at upon the facts found. 16 A. 212, 21 A. 122, 7 P. R. 1904, 2 L. B. R. 303; 1 Cr. L. J. 1022.

—all sentences passed by the Deputy Commissioner of the Sonthal Perganas are final. 17 W. R. 11, 12 C. 536.

—no appeal lies from the order of a Magistrate fining a defaulter under s. 25, Income tax-Act. (Act IX of 1869) 14 W. R. 71.

—an order passed under s. 31 Court Fees Act, directing the accused to pay court fees is not appealable. 20 C. 687.

—appeal does not lie from an order under s. 22 of the Cattle Trespass Act awarding compensation. 15 C. 712, 11 M. 359, P. R. 224 of 1884, 19 M. 238, 10 B. 230, 11 M. 359, 3 N. W. P. 200, 1 C. 712.

S. 404. Unless otherwise provided no appeal to lie. When appeal does not lie—*contd.*

—no appeal lies from an order of a Judge directing prosecution under s. 41 of the Presidency Magistrates Act. (1V of 1877) 2 C. 466, 5 B. 85.

—s. 411 Cr. P. C. does not allow an appeal in the case of conviction by a Presidency Magistrate where the sentences are six months' rigorous imprisonment and fine of Rs. 125 or 200 or in default a further period of three months' rigorous imprisonment. 16 C. 799, 20 B. 145, 2 M. 30.

—no appeal lies to the Sessions Court from the order of the Deputy Magistrate refusing to recall the witnesses for the prosecution for the purpose of cross-examination. 19 W. R. 53.

—no appeal lies from an order restoring possession of immovable property under s. 522 Cr. P. C., 25 C. 630; 2 C. W. N. 225, 27 A. 415, 23 C. 724, 30 C. 690, 7 C. W. N. 634, 34 C. 347, 5 C. L. J. 44.

—appeal against the trial of jury lies on matters of law only. 21 C. 955, 39 A. 358, 23 C. W. N. 661.

—no appeal lies on matters of fact when the accused instead of being tried with the aid of assessors is tried with the aid of jury. 3 Bom. L. R. 218, 25 B. 680, 35 B. 423, 11 Bom. L. R. 350, 26 M. 243; 2 Weir 463, 25 B. 696, 25 C. 555, 3 Bom. L. R. 278 *contra*. 3 C. 763, 24 W. R. 30.

—no second appeal lies to the High Court where the appellate court, under s. 428 Cr. P. C. takes additional evidence and disposes of the appeal. 27 C. 372, 4 C. W. N. 497.

—no appeal lies to the District Judge from an order to furnish security, affirmed by the Sessions Judge on reference. P. R. 23 of 86.

—when the Sessions Judge and assessors find the accused guilty on his own plea, there is no appeal. 5 W. R. 52.

—in a case in which no appeal lies the proper course is to make an application for revision. 1893 A. W. N. 147.

—the question as to the admissibility of evidence is a matter of law. 27 B. 626, 23 C. W. N. 661, 25 C. 230, 2 B. 61, 19 B. 749.

S. 405 (Appeal from order rejecting application for restoration of attached property).

—the expression "court to which appeals ordinarily lie" means that the court to which appeals lie in the majority of cases. 11 B. 438.

—an application under s. 89 by an absconder for restoration of the property cannot question the legality of the proclamation issued under s. 87 (a). No appeal lies under s. 405 from an order rejecting it. 32 P. R. 1019 Cr. : 54 I. C. 954; 21 Cr. L. J. 210.

S. 406. (Appeal from order requiring security for good behaviour).

N. B. The changes introduced by the amendment are principally three. (1) Under the old sec appeal was allowed only in good behaviour cases, now appeal lies from an order directing security to keep the

S. 406. (Appeal from order requiring security for good behaviour)—contd.

peace. (2) Under the old law no appeal would lie from the order of the Dt. M. or Pry. M. directing security but now appeal lies from the order of any M. (3) Under the old law appeal lay to the Dt. M. and now, except under special notification by the Local Government an appeal will ordinarily lie to the S. C. and from the order of the Pry. M. to the H. C. Thus the amendments have set at rest the controversial points

—the second proviso clearly lays down that the moment a reference is made to the Court of Sessions under s. 123 it operates as a bar to an appeal and this principle was recognised under the old law. 23 Cr. L. J. 454 (Lab.).

—in an appeal from an order under s. 107 Cr. P. C. the appellate court can order retrial. 48 A. 501 : 1926 All. 403 : 27 Cr. L. J. 945 : 96 I. C. 497

S. 407 (Appeal from sentence of Magistrate of the second or third class)

—if a second class M. while holding a trial is invested with first class power he will be deemed to hold the trial as second class M. 4 L. B. R. 239, *contra*, 99 I. C. 82 : 1927 Lab. 138 : 28 Cr. L. J. 50, 104 I. C. 109 : 1927 Lab. 398 : 28 Cr. L. J. 781, 101 I. C. 602 : 1927 Bom. 366 : 28 Cr. L. J. 474, 53 M. L. J. 733 : 1927 M. W. N. 669 : 39 M. L. T. 497.

—when part of a trial was held by a M. with second class powers and part after he was vested with first class powers, the proper tribunal for hearing the appeal is the Sessions Judge and not the Dt. M. 86 I. C. 978 : 1925 Pat. 472 : 26 Cr. L. J. 914 : 6 P. L. T. 554

—an appeal from a Bench of Magistrates invested with second or third class powers will lie to the Dt. M. 9 M. 36. But when such Bench is invested with first class powers though consisting of second or third class Magistrates, appeal will lie to the S. J. 9 C. 96, 9 M. 36

—a Dt. M. may delegate the work of hearing appeals but not that of revision. 2 Bom. L. R. 536.

—the Dt. M. after transferring an appeal to a sub-divisional M. is bound to examine the
31 M. 277.

—the sub-divisional M. hearing an appeal under this should give notice of appeal to the Dt. M. under sec. 422 Cr. 24 Bom. L. R. 1150, 46 M. 115. Omission to give notice illegality. 73 I. C. 812 : 24 Cr. L. J. 700 : 1923 B. 74.

S 408. (Appeal from sentence of Aast. S. J. or M. of the first class - *contd.*)

—concurrent sentences cannot be aggregated together to raise the forum of appeal. 48 L. J. 138, 35 A. 154; 11 Cr. L. J. 111; 18 L. C. 679, 23 C. L. J. 515. 1903 P. R. 25, 85, 11 Bom. L. R. 544.

—where an Asst. S. J. passes sentences each of which is four years or under and they are ordered to run concurrently the appeal lies to the S. J. and not to the H. C. 23 C. L. J. 595 : 34 I. C. 986 : 17 Cr. L. J. 265

—where several persons are tried jointly by the Asst. S. J. and some are sentenced to over four years imprisonment and some to less a period an appeal by the latter also will lie to the H. C. and not to the S. J. 47 M. L. J. 248-43 M. L. J. 561, *overruled*, 13 A. L. J. 272 281 C. 737 even if the former did not appeal, 37 A. 471 39 L. C. 158 1916 P. R. 5

—where the total term of imprisonment to which the accused has been sentenced either by an Asst. S J or by a M. empowered under s 30 does not exceed 4 years in its aggregate, the appeal lies to the Sessions Judge 103 I C 208 - 1927 Nag. 255; 28 Cr. L J 672

—where an Assistant Sessions Judge sentences some of the accused to less than four years' imprisonment and others to more, all the accused can appeal only to the H. C., 1926 All 160; 24 A. L. J. 151; 27 Cr. L. J. 175; 91 I. C. 959.

—where the accused was convicted by a Dt. M. under s. 124 A. I P C. and sentenced to two years' imprisonment and under s. 153 A I. P C and was sentenced to one years' imprisonment, two

amounting to 96 L.

—if an appeal is presented to the S. J. instead of to the H. C. the proceedings before the former is void under s. 530 (r). 2 Rang. 386. 1925 Rang. 39

—A Court of Sessions in British Baluchistan can hear an appeal as the Criminal Procedure Code prescribes because a Court of Sessions in British Baluchistan has the same powers over the European British subjects and other persons as are held by Courts of Sessions in British India. 1929 Lah 187; 118 I. C. 438; 30 Cr. L. J. 918.

33 A. 510 · 8 A. L. J. 524 : 11 L. C. 253 : 12 Cr. L. J. 389.

S. 409. (Appeals to court of seasons how heard).

the Supreme Court - this sec. transfer an appeal
: : refer it to the Asst. S. J. for

Sessions Judge has jurisdiction to hear appeals. 19 I C. 195: 14
Cr. L. J. 195.

S. 407. (Appeal from sentence of Magistrate of the second or third class)—*contd.*

—an order under s. 520 is a consequential order which an appellate sub-divisional M. can pass under s. 423 Cr. P. C. 46 M. 115; 71 I. C. 514; 24 Cr. L. J. 162; 32 M. L. T. 104, (30 M. L. T. 251, 31 M. L. T. 365) *Ref.*, 46 M. 162.

S. 408. (Appeal from sentence of Asst. S. J. or M. of the first class)

—a person convicted but released on probation under s. 562 is said to be "convicted" within the meaning of this sec. and can appeal. 29 C. W. N. 151, 1904 P. R. 24, 1917 P. R. 20, 18 P. W. R. 1917, 38 I. C. 961, 18 Cr. L. J. 401, 37 A. 31.

—if a M. of the 1st class passes an order under s. 562 summarily, an appeal lies to the S. J. 46 A. 828; 21 A. L. J. 751; 83 I. C. 172

—an appeal lies against an order under s. 562 cl (1) Cr. P. C. 96 I. C. 121, 28 Bom. L. R. 671; 27 Cr. L. J. 873; 1926 Bom. 352

—appeal lies from an order of compensation and repayment of fine &c., passed under s. 22 Cattle Trespass Act 1871. 23 Bom. L. R. 836; 63 I. C. 160, 22 Cr. L. J. 625, 29 M. 517, 46 B. 58.

—a Dt. M. having special powers under s. 30 cannot on a reference of a case under s. 349 pass a sentence of five years' imprisonment and an appeal will lie to the S. J. and not to the H. C. 4 L. B. R. 53.

—an appeal against the sentence of a first class M. exercising enhanced power under s. 30 Cr. P. C. does not lie to the S. C., but to the Chief Court under s. 408 (b). 5 P. R. 1916; 122 P. L. R. 1916; 35 I. C. 171; 17 Cr. L. J. 299, 17 M. L. J. 248 *Ref.*

—where a 2nd class M. after with the powers of a first class M

1, 53 M. L. J. 733; 39 M. L. J. I. C. 583; 29 Cr. L. J. 71; 1928

Mad 55, *contra* 4 L. B. R. 239.

—where there were two Sessions Divisions in a district, an appeal from a sentence of the Dt. M. lay to the Sessions Division within whose jurisdiction the Headquarters of the M. were situate irrespective of the place where the offence was committed. 30 M. 136, 1918 P. R. 7.

—the sentence of imprisonment exceeding four years in the the substantive sentence of imprisonment apart from
8 P. R. 19; 33 P. W. R. 1918; 46
57, 2 M. 30, 16 C. 799, 20 B. 145.

U. C. 644) *Ref.*

—when an appeal is filed from the Assistant Sessions Judge to the S. J. when the former has been promoted to the position of Offg. S. J. the proper procedure would be to send it to the H. C. or to postpone its hearing till the return of the permanent incumbent. 3 P. L. J. 192; 5 Pat. L. W. 24; 44 I. C. 970; 19 Cr. L. J. 442.

S. 408. (Appeal from sentence of Asst. S. J. or M. of the first class)—contd

—concurrent sentences cannot be aggregated together to raise the forum of appeal. 3 P. L. J. 133, 15 A. 154; 11 Cr. L. J. 111; 18 I. C. 679, 23 C. L. J. 535. 1901 P. R. 25, 85, 11 Bom. L. R. 544.

—where an Asst. S. J. passes sentences each of which is four years or under and they are ordered to run concurrently the appeal lies to the S. J. and not to the H. C. 23 C. L. J. 593; 34 I. C. 986; 17 Cr. L. J. 263.

—where several persons are tried jointly by the Asst. S. J. and some are sentenced to over four years imprisonment and some to less a period, an appeal by the latter also will lie to the H. C. and not to the S. J. 47 M. L. J. 244; 43 M. L. J. 561, *overruled*. 13 A. L. J. 272; 28 I. C. 737 even if the former did not appeal. 37 A. 471; 30 I. C. 159. 1916 P. R. 5.

—where the total term of imprisonment to which the accused has been sentenced either by an Asst. S. J. or by a M. empowered under s. 30, does not exceed 4 years in its aggregate, the appeal lies to the Sessions Judge, 103 I. C. 208; 1927 Nag. 255; 28 Cr. L. J. 672.

—where an Assistant Sessions Judge sentences some of the accused to less than four years' imprisonment and others to more, all the accused can appeal only to the H. C. 1926 All. 160; 24 A. L. J. 151; 27 Cr. L. J. 175; 91 I. C. 959.

—where the accused was convicted by a Dt. M. under s. 124 A. I. P. C. and sentenced to two years' imprisonment and under s. 153 A. I. P. C. and was sentenced to one year's imprisonment, two sentences must be aggregated and considered as one sentence under s. 35 (3) Cr. P. C. and appeal will lie to the H. C., 38 C. 214.

—when a first class M. passes two sentences of fine amounting in the aggregate to over Rs. 50, appeal lies under this section. 96 I. C. 270; 1926 Bom. 416; 28 Bom. L. R. 668, 27 Cr. L. J. 926.

—If an appeal is presented to the S. J. instead of to the H. C. the proceedings before the former is void under s. 530 (r). 2 Rang. 386; 1925 Rang. 39.

—a Court of Sessions in British Baluchistan can hear an appeal as the Criminal Procedure Code prescribes because a Court of Sessions in British Baluchistan has the same powers over the European British subjects and other persons as are held by Courts of Sessions in British India. 1929 Lah. 187; 118 I. C. 438; 30 Cr. L. J. 918.

—s. 413 is an exception to the general rule laid down in s. 408. 33 A. 510; 8 A. L. J. 524; 11 I. C. 253; 12 Cr. L. J. 389.

S. 409. (Appeals to court of sessions now heard).

—this sec. transfer an appeal to the Sessions Judge and transfer it to the Asst. S. J. for

of the Code an addition
Sessions Judge has jurisdiction to hear appeals. 19 I. C. 11
Cr. L. J. 195.

S. 410. (Appeal from sentence of Court of Sessions).

—if a S. J. imposes a punishment of fine in a summary way, for insult to him, the accused is said to be convicted and appeals to the H. C. 4 M. H. C. R. 146.

—'may appeal' does not mean that it lies at the option of the H. C. to entertain the appeal or not. 1891 A. W. N. 48.

—the question whether a statement made to a police officer in the course of an investigation comes under sec. 162 or is made by way of complaint under a. 154 is one of fact. 1930 Cal. 130 : 1930 Cr. C. 130.

S. 411 (Appeal from sentence of Pry. M.)

—the word "imprisonment" in the sec. means a substantive sentence of imprisonment and not the imprisonment in default of fine. 2 M. 30, 16 C. 799, 20 B. 145.

—one day's simple imprisonment and a fine of Rs. 150 does not make the sentence appealable. 3 I. C. 285.

—a sentence of six months and fine not exceeding Rs. 200 or in default another three months does not give a right of appeal. 20 B. 145, 16 C. 799.

—concurrent sentences count as one. 17 C. L. J. 329, 17 I. C. 531

S. 412 (No appeal in cases when accused pleads guilty).

—where a person has pleaded guilty and has been convicted on such plea, he waives his right to question the legality of his conviction. 31 C. L. J. 122 : 56 I. C. 851 : 21 Cr. L. J. 547 F. B.

—if a plea of guilty is not recorded, a retrial should be by an appellate court. *above case*.

—when a plea of guilty is based on a mistake of law it shall not be accepted and it is incumbent on the M. to try the accused on merit. *above case*.

—(per *Newbould J*) the principle of sec. 412 should ordinarily be applied in cases in which the appellate court is asked to exercise its revisional powers. *above case*

—but it has been held by the Bombay H. C. that although the applicant pleaded guilty to an offence in the trial court, it is open to him in revision to contend that the conviction is illegal. 97 I. C. 668 : 28 Bom. L. R. 1023 : 27 Cr. L. J. 1148 : 1927 Bom. 67.

—when a M. passes an enhanced sentence at the request of the accused to make it appealable the S. J. has jurisdiction to hear appeal. 13 Bom. L. R. 503 : 11 I. C. 586 : 12 Cr. L. J. 402.

—this sec. applies where the accused pleads guilty on a charge of previous conviction. 4 N. L. R. 163.

—the extent and legality of the sentence may be considered in appeal, 5 B. 85 and the appellate court must satisfy itself that the plea of guilty was properly made after the nature of the offence was explained to and understood by the prisoner. 22 B. 759.

S. 415. (Proviso to sections 413 and 414).

—a sentence of one day's imprisonment i. e., until the rising of the court and a fine of rupees fifty is a combined sentence which makes it appealable. 33 A. 510.

—"security to keep the peace" refers to an order under this Code and not under any other local law or to security for good behaviour. 4 L. B. R. 359.

S. 415A. (Special right of appeal in certain cases).

721. ... 3 ...
 to remove the conflict of opinions as to
 as well as appealable sentences are
 sanction to the cases reported in 4 P.
 297 (Pat.) 4 L. B. R. 354, 1916 P. R.
 objecting the views expressed in 24 M.
 L. J. 104, 40 M. J. 391, 39 A. 293, 24 Cr. L. J. 679, 7 B. H. C. R. 35, 7 M.
 H. C. R. App 5, 16 M. L. T. 33, 10 S. L. R. 156.

—where an appeal lay on behalf of the convicted person against whom an order under s. 562 (1) Cr. P. C. was made there was a right of appeal as regards the other convicted persons not so released but who were
 W. 1 415 A. Cr. P. C. 29 C.

ntence on one accused may not be appealable but all the accused have a right of appeal if the sentences on the others are appealable. 96 I. O. 121 : 1916 Bom. 382 : 27 Cr. L. J. 873 : 28 Bom. L. R. 671.

—where leave to prefer an appeal by virtue of the provisions of s. 449 Cr. P. C. was granted to one of two accused who were jointly tried and convicted by a Judge of the H. C., held, leave to appeal should be granted to the other also by reason of the provisions of this sec. 54 C. 52. 101 I. C. 657 : 1927 Cal. 307 : 28 Cr. L. J. 431.

S. 417. (Appeal on behalf of Govt. in case of acquittal)
The Local Govt. may direct.

—the H. C. cannot entertain appeal against the order of acquittal except at the instance of the Local Govt. 14 M. 363, 19 W. R. 55, 6 C. L. R. 245, 22 C. 164, 85 I. C. 356 : 1925 Pat. 321 : 26 Cr. L. J. 516.

—this right to appeal against any acquittal cannot be taken away from the Govt. as right to appeal against conviction cannot be taken away from any private person, 43 P. R. 1917 : 43 I. C. 245.

—the power of appeal by the Local Govt. should be sparingly used, 21 Bom. L. R. 1054, 81 I. C. 306 : 26 Bom. L. R. 113, 9 Bur. L. T. 47 : 32 I. C. 683, and when there has been a miscarriage of justice, 22 C. 164, 1897 P. R. 10, 4 A. 148, 3 P. L. T. 396 : 67 I. C. 506 : 23 Cr. L. J. 410, 16 A. 212, 19 Cr. L. J. 987 (Lab.), or gross error of judgment, 1904 P. R. 7, 21 Cr. L. J. 349 (Lab.) 1885 P. R. 29, 21 A. 122, 9 S. L. R. 17, 44 I. C. 179 : 1918 P. W. R. 19, 29 P. W. R. 1918 : 46 I. C. 403, or where it is highly probable that the appeal will end in conviction, 1918 P. W. R. 30, 1885 P. R. 29, 12 P. W. R. 1919 : 20 Cr. L. J. 188 : 49 I. C. 604.

S. 417. The Local Govt. may direct—*contd.*

—tha S J. or the District Magistrate cannot refer such case to the H C 24 O C 4, 6 C L R 245, 42 M 109, 48 I C. 817; 20 Cr. L. J. 49, 72 I C 593 24 Cr L. J 413 1923 Lah 163

—a private person cannot present an appeal under this sec. nor can he apply in revision 14 M 363, 7 C 447, 42 M. 109, *contra*. 71 I. C. 602; 24 Cr L J 186

—In a case under s. 297 I. P. C. where the Local Govt. is interested and is evidently not anxious to take any action and has therefore not appealed against a manifestly illegal order of acquittal it is open to a private party who feels injured to seek interference in revision 71 I. C. 602; 24 Cr L J. 186.

The Public Prosecutor is to present appeal

—the Local Govt can direct only the Public Prosecutor to file an appeal under this sec and the Legal Remembrancer is a Public Prosecutor within the meaning of this sec 23 C W N 96; 46 C. 544; 49 I. C. 490; 20 Cr L J 170

—but tha Legal Remembrancar of Bengal cannot be the Public Prosecutor for Behar even by a letter of Behar Govt. to that effect. 41 C. 425 18 C W N. 279 18 C L J 519

—the mere fact that a person has been directed to present an appeal to the H C from an order of acquittal does not involve his appointment as Public Prosecutor for the purposes of the case. In such cases the statute must be strictly construed 18 C. W. N. 279; 18 C L J. 519; 41 C. 425.

"To Tha High Court"

—the appeal lies to the H. C. only and not to the S J. or Dt. M. 20 C 633, 2 C W. N. 256 (note), 7 M. 213, 26 M 478.

Appeal from an original or appellate order of acquittal.

—the Local Govt can appeal against tha order of "acquittal" only and not against an interlocutory order refusing or altering charges. 16 B. 414

—the "acquittal" contemplated by this sec need not be acquittal upon all the charges 2 C 273, and withdrawal of complaint operates as an order of acquittal 19 W. R 55.

—change of conviction from s 353 1 P. C to one under s. 353 1 P. C does not amount to acquittal under s. 353 1 P. C. hence no appeal lies. 1928 Lah. 230; 111 I. C. 665. 29 Cr. L J. 905, 1927 Lah. 369 *fol*

—it is no ground for setting aside an acquittal that it is based at most on a doubtful weight of facts. 7 P W. R. 1916; 32 I. C. 833; 17 Cr. L. J. 97.

—an appellate court in an appeal from an acquittal can not only find tha accused guilty of tha offence with which he was charged and for which he was tried and acquitted but also can convict an accused person of some nther offence 52 B. 385; 108 I. C. 501; 29 Cr. L. J. 403; 30 Bom. L. R. 330; 1928 Bom. 130, 1925 P. C. 130 *fol.*, 1925 Sind 105 *Approved*, 1924 Bom. 246 and 19 B. 51, *not fol.*

S. 417. When the H. C. will and when it will not interfere.

—a court hesitates to interfere when an accused has been acquitted and it does not so unless there has been a miscarriage of justice 28 O. W. N. 579 : 83 I. C. 631.

—the H. C. will not interfere with the order of acquittal even in revision 1924 All. 624, 5 N. L. R. 4, 15 S. L. R. 171, 6 C. L. R. 245, 15 B. 349, 8 L. B. R. 356, 19 C. W. N. 184 : 21 C. L. J. 53 : 42 C. 612, *contra*, 1 A. 139, 3 A. 448, 2 S. L. R. 25, 42 M. 109 : 48 I. C. 817 : 20 Cr. L. J. 49, 17 P. W. R. 1918 : 44 I. C. 751 : 19 Cr. L. J. 399.

—the H. C. has jurisdiction to interfere on revision with an acquittal but it should ordinarily exercise this jurisdiction sparingly and only when it is urgently demanded in the interests of public justice. 1915 M. W. N. 411 : 17 M. L. T. 457, 28 M. L. J. 690 : 29 I. C. 830 : 16 Cr. L. J. 558, 42 M. 109 : 48 I. C. 817, (16 C. W. N. 184) *fol.* 14 M. 363, 26 M. L. J. 160, 2 A. 448, 6 A. 484, 25 A. 128, 24 A. 346, 15 B. 349, 8 C. 895, 22 C. 164, 5 C. L. J. 452, 7 C. W. N. 521, 11 C. L. J. 113, 38 C. 786, 18 C. W. N. 1244, *Ref.*

—where the question is not of public interest and the parties have a remedy in Civil Courts, no interference with the order of acquittal is necessary. 84 I. C. 641 : 26 Cr. L. J. 337

—the H. C. will not interfere unless the judgment of the lower court was wrong and perverse and without jurisdiction and based upon obvious errors in procedure 18 O. W. N. 666, 67 I. C. 506, 3 Pat. L. T. 396 : 26 Punj. L. R. 295, 99 I. O. 87 : 28 Cr. L. J. 55 : 1927 Lah. 178, 31 L. W. 716, 16 A. 212, 16 Cr. L. J. 529.

—where the question involved is a question of fact and the finding of acquittal was arrived at by the unanimous verdict of the assessors and the Judge the H. C. will not interfere unless it comes to the conclusion that the decision was one which no body of sensible men could arrive at. 1929 Pat. 508 : 119 I. C. 901 : 1929 Cr. C. 268.

—the H. C. will not interfere although the order involves irregularities of procedure. 1928 Sind 176 : 114 I. C. 110 : 30 Cr. L. J. 251.

—the H. C. may interfere if the finding is clearly wrong on the evidence and unreasonable, whether or not the unreasonableness amounts to perversity, stupidity or incompetence. 102 I. C. 492 : 1927 Lah. 549 : 28 Cr. L. J. 586 : 28 Punj. L. R. 313.

—where there were some grounds to justify an acquittal or even just a reasonable doubt supporting the acquittal the H. C. will not interfere. 31 L. W. 716, 16 A. 212, 16 Cr. L. J. 529.

—before interference the H. C. must be satisfied that the case is conclusively proved in the sense in which this has to be done. 27 Punj. L. R. 197.

—in an appeal against an acquittal the accused starts with a double presumption in his favour. (1) there is the rule that the accused must be presumed to be innocent and the prosecution is to make out his case, (2) the accused having been acquitted the superior court will not interfere until the Crown shows conclusively that the inference of guilt is irresistible. 1928 Pat.

S. 417. When the H. C. will and when it will not interfere —*contd.*

146: 29 Cr. L. J. 301: 6 Pat. 768: 107 I. C. 835, the onus is upon the prosecution to prove that the accused was guilty and that the decision of the court was wrong. The prosecution must stand or fall upon its own legs. 8 Pat. 496: 1929 Pat. 491: 1929 Cr. C. 213 10 Pat. L. T. 838

—the reversal of a verdict of the jury accepted by the S. J. is not justified unless the misdirection to the jury has in fact occasioned a failure of justice. 26 C. W. N. 558, 64 I. C. 671: 23 Cr. L. J. 47: 1922 Pat. 321, 45 M. L. J. 815.

—before the Chief Court will interfere with an acquittal the culpability of the accused must be very clear and indubitable 46 I. C. 294: 19 Cr. L. J. 710: 30 P. W. R. 1918.

—order excluding evidence can be legitimately attacked in appeal against the order of acquittal 97 I. C. 1041: 1927 Ind 28.

Procedura in appeal

—there is no distinction in procedure governing an appeal from a conviction. 20 C. W. N. 128, Cr. L. J. 17: 17 C. 485, 20 A. 459, : 19 B. 51, 8 Pat. 496 1929 Cr. C. T. 838 120 I. C. 634: 31 Cr. L.

J. 148.

—but the H. C. cannot consider grounds not urged by the Govt 19 B. 51, 17 C. P. L. R. 75.

—whatever may be the value of the judgment of trial courts which had the opportunity of seeing the witnesses before them and observing their demeanour no such reason can apply where the trial court convicts the accused and the appellate court acquits them. In such a case the H. C. is in a better position to weigh the evidence than the lower appellate court and can interfere to set aside the lower appellate court's order of acquittal 1930 Cr. C. 463, 1930 Lah. 403, 11 P. R. 1903 Cr. Diss., (1927 Lah. 178, 1929 Pat. 491, 7 P. R. 1904) *Ref*

—the sentence passed on appeal under this sec. runs from the date of the committal of the accused to jail. 6 C. L. R. 349

—the appeal must be conducted on its merits as any other appeal and the onus is on the appellant. 47 A. 306: 1925 All 315: 86 I. C. 52: 26 Cr. L. J. 676.

Time of appeal.

—the H. C. refused to interfere where there was delay in prosecution which could not be understood. 1924 M. W. N. 548: 1924 Mad. 768.

—an appeal under this sec. must be presented within six months from the date of the order appealed against. (Art. 157 L. Act)

S. 41B (Appeal on what matters admissible).

N. B. Sub-sec. (2) newly added, has removed the anomaly under the former law that the H. C. acting under s. 374 could consider the facts of the case as regards the person sentenced to death but on an appeal of the second accused could only intervene on a point of law.

Scope of the sec.

—this sec. applies both to appeals by Govt. under s. 417 Cr. P. C. against an order of acquittal as well as to appeals by convicted persons against convictions and sentences. 17 C. P. L. R. 75, 10 C. 1029.

Meaning of "Where the trial was by jury."

—this expression means 'where the trial was in fact held by jury' and not 'where the trial ought to have been held by jury.' So where the accused was tried by a jury in a case which ought to have been tried with the aid of assessors, no appeal would lie except on a question of law. 25 C. 555, 23 B. 696, 25 B. 680, 3 Bom. L. R. 278, 26 M. 243, (*Benson J. Dissenting*), *contra*. 3 C. 765, 24 W. R. 30, 18 W. R. 59, Ratanlal, 961.

—where the accused is tried by jury and there is also another charge which is tried by the Judge with the same jury as assessors, an appeal lies on a matter of fact. 18 Cr. L. J. 346 (M)

—an appeal lies from the decision of a Judicial Commissioner of Sindh holding a Sessions Trial, when the judge has accepted the finding of the jury. 85 I. C. 706. 26 Cr. L. J. 562: 1925 Sind, 249 F. B

Matter of law and fact.

—an appeal lies on matter of law only. 21 C. 955, 23 C. W. N. 661, 39 A. 348, and not on fact however absurd or perverse the verdict may be. 14 M. 36 The H. C. can go into the whole facts of the case when the judge does not agree with the verdict of the jury and submits the case to the H. C. 9 A. 420, 39 A. 348.

—the question as to the admissibility of evidence is a matter of law. 23 C. W. N. 661, 27 B. 626, 2 B. 61, 19 B. 749, 7 C. 268, 27 A. L. J. 1261: 120 I. C. 264: 31 Cr. L. J. 33: 1930 Cr. C. 40: 1930 All. 24.

—where the judge fails to place before the jury some important evidence in favour of the accused it is an error of law supporting an appeal. 44 C. L. J. 233.

—misdirection to the jury, 25 C. 230, 23 C. W. N. 661, 27 A. L. J. 1261: 120 I. C. 264: 31 Cr. L. J. 33: 1930 All. 24: 1930 Cr. C. 40, or a non-direction by the Judge on an important question. 27 B. 644, 27 A. L. J. 1261: 120 I. C. 264: 31 Cr. L. J. 33: 1930 All. 24: 1930 Cr. C. 40, is a matter of law.

—in order to constitute misdirection the point omitted must be of such importance that its omission renders the summing up unfair. 95 I. C. 385: 27 Cr. L. J. 785: 1926 All. 429.

S. 418. Matter of law and fact—could

—an appeal cannot be admitted on the limited ground of sentence only however convenient and practical that course may be. 6 Pat. L. T. 391 4 Pat 254, 86 I. C. 718.

—a restrictive order for admission of a criminal appeal is not contemplated by s. 422 and must be deemed *ultra vires*. The whole appeal should be heard and the appellant cannot be restricted to any selected ground of those specified in his petition. 41 C. 406: 18 C. W. N. 147. 20 I. C. 741.

—where the Court admitted the statement made by a witness to a police officer regarding an unimportant matter and the contradiction was not vital, such admission of evidence could not affect the verdict of the jury and it could not be set aside. 42 C. L. J. 528: 92 I. C. 439 1926 Cal. 320 27 Cr. L. J. 263

—when in a trial by jury the accused was charged with both robbery and murder, the appellate Court must consider the case of murder separately from that of robbery and acquit the accused of murder if there is any doubt 98 I. C. 475: 1927 All. 108: 27 Cr. L. J. 1355

S. 419. (Petition of appeal)

—this sec. prescribes the forms and formalities of presenting an appeal, but s. 420 deals only with the mode of presentation of appeal by the prisoner in jail. 13 A. 171, 1891 A. W. N. 48

—a judgment passed on an appeal under s. 420 Cr. P. C. by an appellant who is in jail and a judgment passed on a similar appeal filed through counsel under s. 419 both stand on the same level. 9 O. L. J. 1 65 I. C. 612. 23 Cr. L. J. 148.

—a petition of appeal containing a false statement does not make the petitioner liable to punishment. 12 M. 451, but a petition of appeal containing defamatory statements against the M. will not be entertained and it may be returned for representation after eliminating the scandalous remarks. 15 B. 488.

—presentation of petition to an officer of the court such as Bench Clerk or to one of the Judges, its member, is valid. 29 M. L. J. 101, but depositing the petition in a box kept for the purpose of depositing papers for the Court is not proper presentation. 19 M. 354

presented by any person autho-

nted in person and not trans-
17, 19 M. 354.

—it may be presented either by the appellant or his pleader, 19 M. 354, 15 M. 137 or by pleader a clerk, 20 M. 87, 21 M. 114, but not by a person over whom the pleader has no control 21 M. 114, or by a pleader who holds *vakalatnama* only on behalf of one of the accused on behalf of whom the petition was prepared and signed by their pleader. 2 Weir 476 But where the accused have conflicting interests one making confession exonerating himself and incriminating the other it would be improper for one pleader to present the appeal on behalf of all. 1890 P. R. 13

S. 419. (Petition of appeal)—*contd.*

—a *vakalatnama* is not necessary for presenting a criminal appeal. A memorandum of appearance is sufficient. 45 M. L. J. 683 : 18 L. W. 960 : 32 M. L. T. 224.

—in case of joint appeal the court may dispense with separate copies. 5 Bom. L. R. 704.

—this sec. gives the appellate court power to dispense with a copy of the order appealed against, even after the appeal has been admitted. 1929 Lah. 614 : 1929 Cr. C. 183 : 30 Cr. L. J. 235 : 114 I. C. 61.

S. 420 (Procedure when appellant in jail.)

—this sec. deals with the manner of presentation of appeal by a prisoner in jail and does not dispense with the formalities prescribed by s. 419 Cr. P. C. 13 A. 171, 1891 A. W. N. 48

—every facility such as pen, ink, paper and writer is to be allowed to the prisoner in jail 13 W. R. 69, 1 B. H. C. R. 16 and he will be heard giving to him or to his pleader the notice of the date of hearing. 2 Weir 472.

—when a jail appeal through the officer-in-charge of the jail has been dismissed, no further appeal through counsel can be preferred. 44 A. 759, 46 M. 382, 44 A. 759, 24 O. C. 304 : 65 I. O. 612. 23 Cr. L. J. 148, 83 I. C. 541 : 1924 Oudh 425, *contra*. A Jail appeal heard in a summary manner does not bar a subsequent appeal through pleader 35 I. C. 133 : 17 Cr. L. J. 453

—a jail appeal through jailor may be summarily dismissed without calling on the appellant to appear. 96 I. C. 589 : 27 Cr. L. J. 933.

—a jail appeal can be disposed of by a Vacation Judge though such an appeal cannot be called an urgent application. 16 M. 382 : 44 M. L. J. 450 : 72 I. C. 599. 24 Cr. L. J. 439.

S. 421. (Summary dismissal of appeal).**Appearance of appellant if necessary.**

—an appeal should not be dismissed for the non-appearance of the appellant or his pleader, the court must judicially determine the appeal on merits. 14 A. L. J. 327, 46 M. 382, 24 Cr. L. J. 475. (Pat.), Ratanlal, 593, 2 Weir 473, 21 A. L. J. 100 : 73 I. C. 694.

—where an appeal was dismissed by the H. C. summarily as neither the appellant nor his counsel was present and the appellant applied for rehearing on the ground that his counsel had failed to appear on account of misinformation as to the date of hearing, held (1) that an appeal could be rejected without formality that is, without recording judgment or any reasons (2) that s. 561 A. did not apply to the case, (3) that s. 369 Cr. P. C. was a bar to the court to alter or review its judgment after it has been signed. 26 Punj. L. R. 616 : 91 I. C. 55 : 27 Cr. L. J. 23. 1926 Lah. 196.

Pleader must be heard.

—after the records are sent for and received the appellate court is bound to hear the pleader for the appellant and cannot

S. 421. Pleader must be heard—contd.

dismiss the appeal summarily. 42 C. L. J. 551 : 92 I. C. 894 : 1926 Cal. 174 : 27 Cr. L. J. 352, 42 C. L. J. 554 : 1926 Cal. 161 : 93 I. C. 76 : 27 Cr. L. J. 412 ; *it has power to dismiss the appeal summarily before the arrival of the record.* 44 C. 554 : 1926 Cal. 161 : 93 I. C. 76 : 27 Cr. L. J. 412, but it has been held by the Rumbay H. C. that all that the sec. refers to is "reasonable opportunity" and that may be given even before the records are called for. 101 I. C. 535 : 1927 Bom. 361 : 28 Cr. L. J. 467

—in rejecting an appeal the pleader must be heard. 3 A. L. J. 693, 17 A. 241, 7 Bom. L. R. 89, 29 M. 236, 12 C. W. N. 248, 7 Lah. L. J. 108 1925 Lah. 355 2 P. L. T. 10, 35 C. 385, 22 Bom. L. R. 188, 117 I. C. 279 : 30 Cr. L. J. 791 : 1929 Nag. 150 : 1929 Cr. C. 19, otherwise the appeal will be re-heard 7 M. 11. C. R. App 29, 5 N. L. R. 76.

—time should be granted to the pleader to argue the appeal 7 Bom. L. R. 89, 36 C. 385 and to present *rakalatnama* 55 I. C. 61 : 21 Cr. L. J. 413, but a pleader cannot claim to be heard for the first time before delivery of judgment 69 I. C. 640 23 Cr. L. J. 752 (Nag).

—but a pleader has not the right to be heard a second time. 10 Cr. L. J. 204, 2 S. L. R. 39.

Extension of time of appeal.

—where an appeal is presented out of time with an application for excusing the delay under s. 5 of the L. Act on the ground that the accused had under a *bona fide* mistake presented proceedings in the wrong court, there was sufficient ground for excusing the delay and the appellant's pleader must be heard upon the point. 103 I. C. 109 : 1927 Bom. 445 23 Cr. L. J. 653.

Notice of date of hearing to appellant.

—notice of date must be given to the appellant. 10 C. L. R. 57, 5 M. 11, 2 Ind. C. 247, 5 N. L. R. 76, and the date of hearing of appeal and the place of hearing must be fixed. 24 W. R. 60, P. R. 7 of 1891, (1881) W. N. 46, 5 N. L. R. 76, 22 Bom. L. R. 188, 5 M. 11, 20 Cr. L. J. 271 (Pat), 2 Weir 475.

—when notice is properly given appeal can be disposed of in the absence of the appellant. 13 A. 171. (1891) W. N. 48 F. B.

Procedure in Summary disposal of appeal.**The court must record judgment and reasons.**

—in rejecting appeal summarily the court is not bound to record a judgment. 21 C. 92, 20 B. 540, 25 M. 534, 9 C. W. N. 623, 2 P. L. J. 695, 13 N. L. R. 169, 19 C. L. J. 316 (Bur), but it is advisable that the court should briefly record its reason. 36 A. 496, 1895 A. W. N. 68, 8 A. 514, 2 P. L. T. 10, 2 P. L. J. 695, 17 A. 241, 13 N. L. R. 169, 25 Cr. L. J. 1237 (Pat.), 38 A. 393, 1 P. L. T. 318, 1 P. L. T. 716, the court need not write an elaborate judgment, 32 C. 178, but so much as would satisfy the H. C. that all the issues have been fully considered, 2 P. L. J. 695, 117 I. C. 279 30 Cr. L. J. 791 : 1929 Cr.

S. 421. Procedure in Summary disposal of appeal—contd.

C. 19 : 1929 Nag. 150, 38 A. 393, 36 A. 496, 8 N. L. R. 84, 13 N. L. R. 169 *Ref.*, otherwise summary dismissal would involve a remand or an examination of the evidence by the H. C. 19 Cr. L. J. 704 (Pat.), 19 Cr. L. J. 6.

—a Judge in rejecting an appeal under s. 421 Cr. P. C. should shortly record the reasons 17 A. 241, 19 A. 500, F. B., 25 M. 534, 82 I. C. 165 : 25 Cr. L. J. 1237, 26 Cr. L. J. 4 (O), 1922 P. 552 : 72 I. C. 893, 3 A. L. J. 693 : (1906) A. W. N. 303, 29 M. 236, 7 Bom. L. R. 89, 8 A. 514, (1895) 15 W. N. 68 *contra*. 9 C. W. N. 623, 21 C. 92, 20 B. 540, 25 M. 534.

Formally admitted appeal cannot be summarily dismissed.

—an appeal once formally admitted cannot be summarily dismissed. 1924 Cal. 642 : 69 I. C. 461 : 23 Cr. L. J. 733, 4 Pat. L. T. 552 : 72 I. C. 613 : 24 Cr. L. J. 453.

—but a Judge may summarily dismiss an appeal of an accused admitting the appeal of co-accused. 5 C. W. N. 332, 9 C. W. N. 623 : 2 C. L. J. 344

Summary rejection of jail appeal, effect of.

—when a jail appeal through the Superintendent of Jail is summarily rejected no second petition of appeal through counsel lies. 44 A. 759. 68 I. C. 41 : 23 Cr. L. J. 505 *contra*., 35 I. C. 133 : 1 Cr. L. J. 453.

—a joint appeal through jailor may be summarily rejected without calling on the appellant. 96 I. C. 589 : 27 Cr. L. J. 933

—where prior to the filing of the Jail appeal a regular appeal through a *Mokhtear* was filed and without knowing this the jail appeal was dismissed held, that both the appeals should have been heard after giving the accused an opportunity of appearing by counsel. 48 A. 208, 1926 All. 178. 90 I. C. 917 : 26 Cr. L. J. 1621.

A complicated appeal should not be summarily dismissed.

—an appeal complicated in law or fact ought not to be summarily dismissed. 3 P. L. J. 389 : 19 Cr. L. J. 221 (C) 22 Cr. L. J. 349, (Cal) 24 Cr. L. J. 477 (Pat.), 1922 P. 552 : 72 I. C. 893 : 24 Cr. L. J. 477.

—where the appellate court disposed of an appeal in which evidence was voluminous, in a single paragraph, it was not in accordance with law. 1 Pat. L. T. 716 : 57 I. C. 664 : 21 Cr. L. J. 648.

Procedure in hearing appeal.

—a criminal appeal ought not to be heard at the time of the presentation of the papers even for the purpose of dismissal under s. 421. 48 M. 385 : 47 M. L. J. 661 : 1924 M. W. N. 893 : 1924 Mad. 893, *contra*. 101 I. C. 535, 1927 Bom. 361 : 28 Cr. L. J. 467.

—a decision upon a perusal of the judgment only without perusing the record is illegal. 19 I. C. 182 : 14 Cr. L. J. 182.

—where the appellate court disposed of an appeal in which evidence was voluminous in a single paragraph, it was not in

S. 421. Procedura in hearing appeal—contd.

accordance with law, 1 Pat. L. T. 716; 57 I. C. 664; 21 Cr. L. J. 648.

—where a criminal appeal raises questiones of fact the appeal ought not to be disposed of without the original records being called for. 47 M. L. J. 661; 1924 M. W. N. 893. (36 C. 385, 29 M. 236) *fol.*

—an order of summary rejection is final. 19 B. 732, 4 B. 101. 1897 P. R. 24 but when the appeal is dismissed for non-appearance of pleader, and there is reasonable excuse for such non-appearance the appellate court may rehear the appeal. 46 M. 382.

—in an appeal from conviction it is for the appellate court, as for the first court, to be satisfied affirmatively that the prosecution case is substantially true, and that the guilt of the accused has been established beyond all reasonable doubt. 18 C. W. N. 1215; 42 C. 374; 26 I. C. 134.

—where the grounds of appeal disclose reasons for discrediting the witness for the prosecution, records should be called for, 29 M. 236, so also where the lower court's judgment is a long and intricate one, 3 P. L. J. 389, 24 Cr. L. J. 477.

—at the hearing of appeal under s. 421 Cr. P. C. counsel for the appellant was entitled to refer to certified copies of the evidence. 9 Cr. L. J. 55, 10 O. C. 360.

Withdrawal of appeal.

—a petition of appeal may be withdrawn. 5 C. L. R. 372

Interference by the High Court.

—when an appeal is dismissed summarily without recording any reasons for judgment the H. C. may go into the case itself or remand the case to be reheard. 19 Cr. L. J. 304 (Pat.), 19 Cr. L. J. 316 (Bur.), 13 O. C. 309

—when the appeal should not have been dealt with summarily the H. C. will send back the case for rehearing 19 Cr. L. J. 316 (Bur.)

—when an appeal is dismissed by the S. J. summarily but the H. C. finds that the conviction was based on insufficient evidence the H. C. will set aside the conviction. 10 C. W. N. 446.

S. 422. (Notice of appeal.)**An appeal cannot be heard on limited ground.**

—an appeal cannot be admitted on the limited ground of sentence only, however convenient and practical that course may be. 6 Pat. L. T. 381 4 Pat. 254; 86 I. C. 718.

—a restrictive order for admission of a criminal appeal is not contemplated by s. 472 and must be deemed *ultra vires*. The whole appeal should be heard and the appellant cannot be restricted to any selected ground of those specified in his petition. 41 C. 406; 18 C. W. N. 147; 20 I. C. 741

S. 422. Notice.

—notice to the appellant of the time and place of bearing is obligatory. 2 Weir 475, a general notice in the court house is not sufficient, 5 M. 11, and the notice must specify the exact date of hearing, 1881 A. W. N. 46 and the appeal must be heard at the time and place named in the notice of appeal. 5 N. L. R. 76, 1891 P. R. 7, 1905 P. R. 11.

—notice of date must be given to the appellant 10 C. L. R. 57, 5 M. 11, 2 Ind. C. 247, 5 N. L. R. 76, and the date of hearing of appeal and the place of hearing must be fixed. 24 W. R. 60, P. R. 7 of (1891), (1881) A. W. N. 46, 5 N. L. R. 76, 22 Bom. L. R. 128, 5 M. 11, 20 Cr. L. J. 271 (Pat.), 2 Weir 475

—it is a fundamental principle of law that no order should be passed to the detriment or prejudice of a party without giving him an opportunity of being heard. 43 C. L. J. 585; 1926 Cal. 1054; 97 I. C. 62. 27 Cr. L. J. 1886.

—the notice must be given to the appellant or his pleader and the pleader's attention should be drawn to it. 10 C. L. R. 57

—when the appellant in jail has been given notice of appeal, he is entitled, if he so desires, to appear in person, if he is not represented by a pleader to argue his case. 50 A. 543; 29 Cr. L. J. 334; 1926 All. 84; 29 A. L. J. 275; 108 I. C. 122; 9 A. I. Cr. R. 150, F. B., (13 A. 171 F. B., 1927 Oudh 312), Diss.

—when compensation is awarded to the accused and the complainant appeals, notice should be given to the public prosecutor or the officer appointed by the Local Govt. but no notice to the accused is obligatory. 33 M. 89, 27 M. L. J. 629, 41 M. L. J. 172, though it is also desirable that in such cases notice should be given to the accused also to afford him opportunity to support the order. 38 M. 1091, 29 M. 187, 25 Cr. L. J. 209 (Lah.)

—in appeals from orders under s. 545 it is better to give notice to the complainant also. 14 N. L. R. 131.

—notice should also be given to such officer as the Local Govt. appoints. 29 M. 187. In Bengal, if a rule is issued against the order of a S. J., he is the proper person to show cause. 7 C. W. N. 80. In other cases the Dt. M. has been appointed as the officer to receive notices of appeal, 7 C. W. N. 80, so also in Bombay. 24 Bom. L. R. 1150. In Madras the public prosecutor is the officer appointed for the purpose. 1915 M. W. N. 540.

—omission to give such notice to the Dt. M. is an illegality. 24 Bom. L. R. 1150, 83 I. C. 349; 1925 Mad. 375. But objection should be taken by the Dt. M. and not by complainant. 25 Bom. L. R. 231, 86 I. C. 287.

—but when an appeal is heard by the Dt. M. who is himself the officer authorised to receive notice no formal notice is necessary; 41 M. L. J. 172 but when the appeal is filed before the Dt. M. and is heard by Joint M. notice must be given to the Dt. M. 83 I. C. 349.

S. 423. (Power of appellate court in disposing of appeal.)**Sub-headings of notes.**

- (1) Appeal must be disposed of on merits.
- (2) The Appellate Court must be satisfied as to the grounds of interference
- (3) Appeal once admitted cannot be summarily disposed of.
- (4) Hearing parties and their pleaders.
- (5) Dismissing appeal summarily.
- (6) Appeal from acquittal
- (7) Appeal from conviction.
- (8) Order of re-trial.
- (9) Order of commitment.
- (10) Alteration of finding.
- (11) Reduction of sentence.
- (12) Enhancement of sentence.
- (13) Amendment of finding
- (14) Incidental or consequential orders.
- (15) Interference with the verdict of the jury
- (16) Appeal from trial with the aid of assessors
- (1) Appeal must be disposed of on merits

—the appellate court must dispose of the appeal on merits even if the appellant is absent. An appeal cannot be dismissed for non-appearance. 50 C. 972; 27 C. W. N. 947, 20 Cr. L. J. 744 13 A. 171, 20 Cr. L. J. 271 (Pat.), 24 Cr. L. J. 475 (Pot), 4 Pat. L. T. 552; 72 I. C. 613, 5 N. L. R. 76, 14 A. L. J. 327, 21 A. L. J. 100, 6 Pat. 16; 110 I. C. 831; 1927 Pat. 176, 1930 Oudh 334; 1930 Cr. C. 46; 7 O. W. N. 208

—the appellate court must peruse the whole record and not merely the judgment of the lower court and cannot base his decision upon the perusal of the judgment. 14 Cr. L. J. 182 (C)

—when the records are lost new trial should be ordered. 1885 A. W. N. 117, 1889 A. W. N. 55

—ordinarily the appellate court has all the rights of the court of revision and reference. 32 C. W. N. 673; 47 C. L. J. 483; 1928 Cal. 444; 111 I. C. 323; 29 Cr. L. J. 819

—the appellate court must consider the evidence both oral and documentary. 1 P. L. T. 716, 42 C. 376; 18 C. W. N. 1215

—the appellate court being the final court, on facts, it is incumbent on that court to go into the evidence and to refer to it in such a manner as might strike the H. C. which is asked to exercise its revisional powers that the appellate Judge had applied its mind intelligently and carefully to the consideration of the evidence in the case. 4 Pat. L. T. 503. 72 I. C. 519. 1 Pat. L. R. 55.

—when an appellate court does not dismiss on appeal summarily, it must dispose of it in the manner provided under this sec., and cannot refer to the H. C. for the decision of a question of law 7 L. B. R. 251, 25 I. C. 995; 15 Cr. L. J. 667.

S. 423. (1) Appeal must be disposed of on merits—contd.

—an appellate court cannot acquit the accused without going into the case or dismissing the evidence, on the ground that the matter is of a civil nature. 27 O. L. J. 236: 44 I. C. 337: 19 Cr. L. J. 321.

—if a Sessions Judge reviewing an order of his predecessor in office calls upon the lower court to submit a revised judgment the order of review does not fall within s. 423 Cr. P. C. and is invalid, the proper course being to make a reference to the H. C. 53 B. 578: 1929 Bom 309: 31 Bom L. R. 593: 1929 Cr. C. 130: 121 I. C. 588: 31 Cr. L. J. 309

(2) The Appellate Court must be satisfied as to the grounds of interference.

—the appellant must satisfy the appellate court that there is sufficient ground for interference 5 A. 386, *contra*. This is not the standpoint from which an appeal in a criminal case is to be approached, the appellate court itself is to be satisfied that the prosecution case is true. 42 O. 374: 18 G. W. N. 1215.

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42 O. 374.

—if the appellate court entertains any doubt about the correctness of the conviction, it should discharge the accused. 23 O. 347, 4 L. B. R. 340, 20 W. R. 13

(3) Appeal once admitted cannot be summarily disposed of.

—a criminal appeal having been once admitted it cannot be disposed of summarily. 4 Pat L. T. 552: 72 I. C. 613, 1924 Cal. 643: 69 I. C. 461: 23 Cr. L. J. 733, 1 Bom. L. R. 225, 3 Bur. L. J. 18, the appellate Court has to peruse the record and form an opinion as to whether there is sufficient grounds for interference. 50 B. 673: 1926 Bom. 548: 27 Cr. L. J. 1167: 97 I. C. 751.

—but a Judge may summarily dismiss an appeal of co-accused. 5 G. W. N. 322: 9 G. W. N. 623: 2 O. L. J. 344.

(4) Hearing parties and their pleaders

—the appellant or his pleader should be heard, 13 A. 171, 20 Cr. L. J. 271, but if the appeal is disposed of on merits after perusal of the record and considering the grounds of appeal the fact of the pleader not being heard does not affect the judgment. 1 Pat. 589.

—the complainant cannot claim to be heard. 7 M. H. C. App. 42, 9 G. W. N. 60 (note), 1886 F. W. R. 29.

—in the absence of Public Prosecutor a vakil privately instructed may be heard. 1 Weir 476.

—the counsel for the appellant has a right of reply. 11 G. W. N. 43 (note), 38 O. 307, 1917 P. R. 21, 36 I. C. 835: 18 Cr. L. J. 3, 11 O. L. J. 693, 25 Cr. L. J. 1173: 82 I. C. 37.

S. 423. (4) Hearing parties and their pleaders—contd.

—an accused person has no right to reply under s. 423, but the privilege of replying should not be refused by an appellate court. 82 I. C. 37; 25 Cr. L. J. 1173; 1925 Oudh. 50

(5) Dismissing appeal summarily.

—where an appeal is admitted and dealt with under this sec. it is to be decided on merits and cannot be disposed summarily.

Cr. C. 517.

(6) Appeal from acquittal.

—appeal against order of acquittal lies to the H. C. only, 7 M. 213, The S. J. 2 C. W. N. 256 (note), 20 C. 633 or the Dt. M. 26 M. 478, 7 M. 213 has no power to hear such appeals.

—an appeal from an order of acquittal does not stand on a different footing 20 C. W. N. 128, 21 Bom. L. R. 1054, 17 C. 485, 20 A. 459, 26 Bom. L. R. 113, 9 S. L. R. 17

—there is no apparent distinction between the right of appeal against an order of acquittal and the right of appeal against conviction. 20 A. 459; (1898) W. N. 117, 4 A. 218, 2 A. 528.

—the High Court in exercising jurisdiction in the matter of appeal against acquittal, should confine its exercise to the particular grounds of objections which are raised by Government. 19 B. 51, 17 C. P. L. R. 75, 7 P. R. 1904

—acting under s. 423 (1) (a) the H. C. can avail itself of the provisions of sec. 237 Cr. P. C. and convict the accused for lesser offence (in this case the accused was acquitted of an offence under s. 302 I. P. C. and a conviction was returned for the offence of 1 accused of

52 B. 395;
L. R. 330:

—in capital cases, when the Local Government appeals under s. 417 Cr. P. C., it is undesirable that the prisoner's fate should be discussed while he remains at large 9 A. 528

—the H. C. will not interfere unless the judgment of acquittal is either necessary or based on objection of procedure, 16 Cr. L. clear and more convincing in order case of judgment

—the H. C. cannot go beyond the ground urged on behalf of the Govt. 19 B. 51, 17 C. P. L. R. 75 but grounds not stated in the petition of appeal may be allowed if it does not prejudice the accused. 12 B. H. C. R. 1.

S. 423. (6) Appeal from acquittal—*contd.*

—further inquiry may be directed in an appeal from an order of acquittal. 27 C. 126.

(7) Appeal from conviction.

—an appellate court cannot set aside a conviction without finding that it is wrong. 17 C. P. L. R. 97.

—an appeal against conviction opens out the entire case and an Appellate Court may record a conviction for an offence of which the trial court has found the accused not guilty. 16 A. L. J. 918; 48 I. C. 502; 20 Cr. L. J. 22.

—a conviction cannot be set aside merely on the ground that all the witnesses for the accused have not been examined. 2 Weir 61, 481, *contra*, 1884 P. R. 28.

—an appeal can not be admitted on the limited ground of sentence only however convenient and practical that course may be. 6 Pat. L. T. 381; 1925 Pat. 453; 26 Cr. L. J. 862; 86 I. C. 718.

—an appellate Court may take further evidence under s. 413 but cannot direct further inquiry. 19 A. L. J. 961.

—it is the duty of the Appellate court to look into evidence adduced by the defence in the case though the counsel for the appellant did not refer to it. 40 C. 376; 20 I. C. 403; 14 Cr. L. J. 419.

(8) Order of Retrial.***When retrial may be ordered.***

—a retrial may be ordered for want of jurisdiction of the trial court. 8 A. 14, 2 Weir 482, 1885 A. W. N. 295, 3 Bur. L. T. 9, 29 C. 412, 46 C. 212 but in such cases omission to order retrial does not prevent the M. from taking further proceedings against the accused. 20 C. 412, and the S. J. annulling the conviction may pass the order of retrial subsequently 3 M. 48.

—a retrial may be ordered where the evidence disclose a different offence. 36 M. 457, 1882 A. W. N. 112 or a more serious offence. 11 C. W. N. 1, but see 28 Punj. L. R. 166; 102 I. C. 511; 28 Cr. L. J. 575; 1927 Lab. 733.

—retrial may be ordered in case of serious irregularities in recording evidence. 1922 Pat. 159, 65 I. C. 1002; 3 Pat. L. T. 398; 23 Cr. L. J. 218

—a retrial may be ordered on the ground of misjoinder of parties, 28 C. 104, or for misdirection to jury, 4 C. W. N. 576, or for absence of a defect in charge, 7 C. W. N. 301, or for irregularity of proceedings 1883 A. W. N. 99, 36 M. 457 or for error of procedure. 1922 Pat. 159, 2 Weir 481, or for the judgment not being in conformity with s. 367, 1920 M. W. N. 120, 31 I. C. 1006; 17 Bom. L. R. 1085, 61 I. C. 654; 22 Cr. L. J. 414.

—it is rather for supplying formal defects that an appellate court orders retrial. 42 M. 885, 1930 Mad. 189; 1930 M. W. N. 191; 122 I. C. 497; 31 Cr. L. J. 422; 1930 Cr. C. 189.

S. 423. (8) Order of Re-trial—contd.

—when a conviction on the evidence is doubtful, it is not necessary to order a retrial when the appellate court sets aside the conviction. 30 M. L. T. 18 69 I. C. 380; 23 Cr. L. J. 700.

—when the verdict of the jury was set aside for irregularity and the judgment of the H. C. contained the following sentence: "It will be open to the Crown to proceed further with the case, if it be so advised" and at the end of the judgment there was this sentence "We direct that, until a fresh trial if any, the accused be enlarged on bail to the satisfaction of the D. M." it was an order of retrial by the H. C. which it had jurisdiction to pass. 46 C. 212; 23 C. W. N. 94; 29 C. L. J. 34; 49 I. C. 849, 22 C. W. N. 740 *Ref.*

—where there has been no legal decision of an appeal the Judicial Commissioner's Court has power to remand the case for retrial. 8 N. L. R. 84 15 I. C. 975 13 Cr. L. J. 559

—when the sessions Judge first heard the arguments on the question of joinder of charges and wrote and signed the order "I must set aside the conviction" and then heard the arguments on other points and passed another order "I set aside the conviction and sentence and direct that the accused be retried" held that the last order was the final order and the Judge did not become *functus officio* by passing the first order. 1929 Cr. C. 219. 1929 Lab. 692.

When re-trial should not be ordered

—a retrial should not be ordered on the ground that the decision of the lower court is not satisfactory. 32 C. 1069, or on the ground that some more witnesses should have been examined 31 C. 710, 16 A. L. J. 325, or on the ground that some inadmissible or irrelevant evidence has been admitted in evidence. 1 Bur. L. J. 32.

—an appellate Court should not order retrial where the
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 31 Cr. L.

amended charges after acquittal on the original charge
 sed on the original charge
 ion evidence to be false.

ingly exercised and retrial
 should not be ordered unless there are grave reasons for doing so. 13 A. L. J. 477; 29 I. C. 65; 16 Cr. L. J. 433, 15 A. 205 *Ref.*

—a retrial can only be ordered in an appeal against a conviction. In an appeal from an order under s. 110 Cr. P. C. requiring security the appellate court can either reverse the order or alter it but can not order retrial. 1929 Lab. 28 30 Punj. L. R. 416; 115 I. C. 544; 30 Cr. L. J. 491

Procedure in the case of order of re-trial.

—when a retrial is ordered, it is always open to the prosecution to proceed or not as it may be advised. 33 C. L. J. 180; 61 I. C. 1003, 25 Cr. L. J. 475.

S. 423. (8) Order of Re-trial—contd.

—the case shall be retried in the view of the instructions contained in its order of retrial and the accused is entitled to adduce additional evidence. 3 O. L. J. 303

—the Appellate Court can specify the court by which the retrial is to be held. 8 A. 14, 2 Weir 484, Ratanlal. 367, 982, 1913 P. L. R. 7.

—a Sessions Court cannot order re-trial before itself. 95 I. C. 385; 1926 All. 429; 27 Cr. L. J. 785

—the words "court of competent jurisdiction subordinate to such Appellate Court" are not to be construed as words of limitation and do not exclude the Appellate Court from itself trying the offender when the offence is within its jurisdiction, 30 M. 218, 2 Weir 481 *contra*. Ratanlal 982.

—the order of retrial must be taken to be one upon all the charges originally framed. 22 O. 377, 13 Cr. L. J. 497 (C).

—evidence already in the record cannot be directed to be treated as evidence in the case as it is contrary to the provisions of ss. 423 and 428 Cr. P. C., 19 Cr. L. J. 77; 43 I. C. 109; 3 P. L. W. 224 1 P. L. J. 99; 35 I. C. 508; 17 Cr. L. J. 332.

—when an Appellate Court orders under s. 423 (1) (b) that a convicted person be retried, it may, in a suitable case, direct at the same time that the new proceedings should commence with the framing of a proper charge. 9 N. L. R. 42; 19 O. 326; 14 Cr. L. J. 230, 4 N. L. R. 71 *Dist.* 23 O. 104, 25 C. 363, 32 M. 220, 15 O. 608 *Ref.*, 104 I. C. 909; 28 Cr. L. J. 393; 1928 Pat. 50.

(9) Order of commitment.

—the Appellate Court may order commitment to the court of Sessions when it finds that the case is exclusively triable by the Court of Sessions, 8 A. 14, 20 A. L. J. 568, 67 I. C. 728; 23 Cr. L. J. 456, 2 Weir 484, or when it considers that though the offence is not exclusively triable by the Court of Sessions still it should be tried by the Court of Sessions. 15 A. 205, 16 B. 580, 23 C. 350, or for adequate punishment. 1895 P. R. 16

—the Appellate Court cannot commit a case to itself but can direct a competent M. to make such commitment. 1907 M. W. N. 178.

—the H. C. has jurisdiction in revision to revise or alter an order of commitment passed by a S. J. under s. 423 (i) (b). 82 I. C. 767; 25 Cr. L. J. 1375. 11 O. L. J. 748.

(10) Alteration of finding.

—s. 423 Cr. P. C. empowers the court to alter the finding maintaining the sentence and it is conceded that a finding of acquittal may be altered to a conviction on a point of law. No valid reason can be conceived for limiting the word "finding" to a finding upon a point of law as distinct from a finding upon a point of fact. 3 Pat. L. J. 565, 46 I. C. 415; 19 Cr. L. J. 735.

—but where the M. whilst stating that he did not pass a separate sentence under s. 323 I. P. C. actually passed under s. 147

S. 423. (10) Alteration of finding—contd.

a combined sentence for two offences, held, that the *apparent maintenance* of the sentence upon the alteration of the finding was in reality an enhancement and was *ultra vires*. 10 Pat. L. T. 587 : 1930 Pat. 20 : 1930 C. 256 : 1930 C. 256 : 31 C. L. J. 172

lower court as acquitted
12 Cr. L. J. 572, 25 C. 975 *fol.*

—the power of the appellate court to pass sentence is restricted by the power of the original court. An appellate court cannot pass a sentence which the original court was not competent to pass. 45 A. 594, 39 C. 157, 7 N. L. R. 109, 2 Weir 487, 12 M. 45

—the S. J. has no jurisdiction to set aside an order of acquittal of an offence under s. 379 I. P. C. passed by the trying M. when he upholds the conviction under s. 143 I. P. C. *as it is not a case of altering the conviction*. 27 C. W. N. 555, 37 C. L. J. 409, 75 I. C. 362. 24 Cr. L. J. 938.

—an appellate court has power under s. 423 Cr. P. C. to alter the conviction from one under s. 353 I. P. C. to one under s. 183 I. P. C. 1912 M. W. N. 1110, 19 I. C. 335, 14 Cr. L. J. 239, or a conviction under s. 423 I. P. C. to one under s. 403 I. P. C. 115 I. C. 25 : 11 Lah. L. J. 113 : 1929 Lah. 508 : 1929 Cr. C. 61.

—the exercise of the power of the Appellate Court to alter the finding while maintaining the sentence should not prejudice the accused whose defence might have been different under the altered charge in the first court. 20 Cr. L. J. 780 : 53 I. C. 620.

—the accused may be charged with several offences and

—in altering the sentence the Appellate Court cannot act in contravention of the provisions of ss. 237, 238 and 239, 7 M. L. T. 79, 1905 P. R. 38. In a conviction of murder cannot be changed into a conviction for an offence against property. 20 A. 107, 4 Lah. 373 or a conviction under s. 409 I. P. C. cannot be changed into a conviction under s. 161 I. P. C. 8 A. 120 or a conviction of abetment of offence under s. 454 I. P. C. cannot be changed into a conviction under s. 454 I. P. C.

or a conviction under s. 147 I. P. C. cannot be altered into one under s. 323 in the absence of a charge under that sec. 87 I. C. 842 : 26 Cr. L. J. 1018 (C) or a conviction under s. 376 I. P. C. cannot be altered into a conviction under s. 366 I. P. C. 4 Bnr. L. J. 29.

S. 423 (10) Alteration of finding—contd.

—an Appellate Court can alter a conviction for one offence into one for a graver offence, if it does not prejudice the accused. 81 I. C. 881 : 25 Cr. L. J. 1057.

—a conviction under s. 325 cannot be altered to a conviction under s. 323 I. P. C., 72 I. C. 73 : 24 Cr. L. J. 312.

—the H. C. is not justified in altering the conviction under s. 302 I. P. C. to a conviction under one of the sections dealing with offences against property. 96 I. C. 860 : 27 Cr. L. J. 1004 : 1926 Lah. 691, (1925 P. C. 130) *Dist.*, (1924 Lah. 109) *fol.*

—when the S. J. in appeal altered the conviction under ss. 205 and 109 I. P. C. to one under s. 119 the H. C. could in the revision re-alter the conviction to one under ss. 205 and 109 I. P. C. 102 I. C. 337 : 1927 Pat. 119 : 28 Cr. L. J. 529.

—where the prosecution established certain acts constituting an offence and the accused by his defence endeavoured to meet the accusation of the commission of those acts but the trial court misapplied the law to those acts by charging and convicting the accused for an offence other than proper one, the Appellate Court may alter the charge and finding and convict the accused for an offence which those acts properly constitute, if the accused is not prejudiced. Such an error being one of form rather than of substance a conviction of an attempt to commit an offence may be altered into a conviction for substantive offence. 26 C. 863, 1890 A. W. N. 86

—but it would be improper and unfair to convict the accused of a more serious offence to which he had never pleaded on the trial, specially if the new offence was not cognate to the offence for which he was tried and convicted, and if there were aggravated circumstances to which he had not pleaded guilty. 26 C. 863, 3 L. B. R. 232

—it is competent to an Appellate Court to alter a conviction under s. 147 I. P. C. to one under s. 323 I. P. C., 20 A. L. J. 213 : 65 I. C. 854 : 23 Cr. L. J. 198.

—where the Sessions Judge altered a conviction under s. 326 read with s. 149 I. P. C. to one under s. 326 read with s. 34 I. P. C. without raising any specific charge under s. 34 but the accused was prejudiced, the conviction was not invalid for want of charge. 7 Pat. 758 : 113 I. C. 676. 30 Cr. L. J. 205. 1929 Pat. 11.

—where the accused is convicted under some section but is acquitted under others the Appellate Court can convict the accused under the latter sections. 23 C. 975, 34 M. 545. 34 A. 115, 1 Rang. 436, 16 A. L. J. 918, 96 I. C. 213 : 1926 All. 700. 27 Cr. L. J. 901, but not so while maintaining the sentence under the former sec. 27 C. W. N. 555 : 37 C. L. J. 409.

—conviction of a composite offence may be altered into a conviction for the elements of the composite offence. Ratanlal 293

—conviction for substantive offence cannot be altered into a conviction for abetment of that offence. 33 M. 264, 11 B. H. C. R. 240, 1928 Lah. 382 : 30 Cr. L. J. 18 : 112 I. C. 850.

S. 423. (10) Alteration of finding—*contd.*

—a conviction under s. 420 I. P. C. may be altered into one under s. 409, 81 I. C. 881 25 Cr. L. J. 1037.

—no appellate court cannot alter the finding and convict the accused of an offence which the Lower Court was not competent to try. 7 A. 414, 7 N. L. R. 109; 11 I. C. 788; 12 Cr. L. J. 441, 21 C. 622, 29 M. 190, 30 M. 48.

—an Appellate court cannot alter a conviction for an offence into one for that offence and another offence in the alternative. Ratanlal. 368.

(11). Reduction of sentence.

—when a single sentence is passed for two sentences, the appellate court may alter the sentence of one of the offences into a fine, but if it can be inferred that the trial court did not intend to pass any sentence on the conviction which is set aside in appeal, no reduction of sentence is necessary. 7 M. L. T. 81.

—in case of a single sentence of imprisonment and fine for two offences, it cannot be construed that the imprisonment was imposed for one offence and fine for another. Ratanlal 409.

(12). Enhancement of sentence.

What amounts to enhancement of sentence and its legality.

—when the accused is convicted on two separate charges and the conviction on one of the charges is reversed, retention of the sentence has virtually the effect of an enhancement of the sentence. 24 C. 316, 22 B. 760, 30 M. 48, 3 N. L. R. 67, 1887 P. R. 45.

—when the conviction on one of the several charges is set aside, the sentence must be reduced. 10 M. L. T. 115; 1911 M. W. N. 97; 11 I. C. 798. 12 Cr. L. J. 454, 30 M. 48 fol.

—where the M. whilst stating that he did not pass a separate sentence under s. 323 I. P. C. actually passed under s. 147 a combined sentence for two offences, held that the apparent maintenance of the sentence upon the alteration of the finding was in reality an enhancement and was *ultra vires*. 10 Pat. L. T. 587.

—a fine of Rs. 50 or in default one week's rigorous imprisonment altered by the appellate court instead of one week's rigorous imprisonment only amounts to enhancement of sentence. 5 P. W. R. 1916 Cr. 17 Cr. L. J. 212; 34 I. C. 324.

—where the accused was convicted for robbery and hurt and sentenced to ten months' and one day's imprisonment and the Appellate Court set aside the conviction for the robbery and sentenced the prisoner to six months' imprisonment it was enhancement. 24 C. 317 (note).

—where the accused was convicted for rioting and theft and sentenced to four months' and two months' imprisonment and the Appellate Court upheld the conviction of theft only and sentenced

S. 423. (12) Enhancement of sentence—*contd.*

the accused to six months' imprisonment it was enhancement. 3 N. L. R. 67.

—where the M. passed separate sentences under s. 384 and 420 I. P. C. and the Sessions Judge in appeal confirmed the aggregate sentence for offence under s. 384 only it was enhancement and was beyond the power of the Sessions Judge but the H. C. could maintain the sentence awarded as an order of enhancement passed by itself. 1928 B. 346; 30 Bom. L. R. 967; 29 Cr. L. J. 1082; 112 I. C. 586.

—altering the conviction under s. 324 I. P. C. to one under s. 323 I. P. C. but maintaining the sentence is not enhancement of sentence. 104 I. C. 440; 28 Cr. L. J. 824; 1927 Mad. 789.

—but where the appellate court set aside the conviction under s. 379 upholding the conviction under s. 341 I. P. C. while still maintained the order of fine, it amounted to an enhancement of the sentence and was contrary to the provisions of s. 423 (1) (b). 49 A. 484; 1927 All. 375; 28 Cr. L. J. 695; 101 I. C. 471.

—where the accused was convicted under s. 429 I. P. C. and sentenced to rigorous imprisonment, for two months and to a fine of Rs. 50 or in default one month's rigorous imprisonment, and the Appellate Court altered the sentence into one of one month's rigorous imprisonment and a fine of Rs. 200 or in default to two months' rigorous imprisonment, it was an enhancement of the sentence. 5 Pat. L. T. 622; 3 Pat. 638; 82 I. C. 50.

—reducing the sentence of imprisonment, but adding a sentence of fine or in default imprisonment is enhancement. 17 A. 67, 1887 A. W. N. 100, 23 A. 497, 3 N. L. R. 90, 1916 P. W. R. 5. 3 Pat. 638.

—but where a sentence of three months' rigorous imprisonment was reduced by the appellate court to one month's rigorous imprisonment and a fine of Rs. 60 with further two months' rigorous imprisonment in default of payment, and the accused was in a position to pay the fine, the order of the appellate court was valid in law. 1929 M. W. N. 896.

—a sentence of fine cannot be altered into a sentence of imprisonment. fine is always considered lighter.

in a sentence of fine only is enhancement. 2 Weir 480

—increasing the amount of fine by imposing additional fine in lieu of imprisonment is enhancement. 2 Weir 487.

—the addition of sentence of whipping reducing the sentence of imprisonment is an enhancement. 2 Weir 487, 15 W. R. Cr. 7. alteration of sentence of imprisonment to one of whipping is an enhancement and is not authorised by s. 423 sub-sec. (1) cl. (b) sub-clause (3). 1928 Rang. 265; 114 I. C. 523; 30 Cr. L. J. 328, 15 W. R. Cr. 7, 2 Weir 487 *Rel on. Ratanlal*, p. 131, *Dist.* So also imposing solitary confinement reducing the imprisonment is enhancement. 1890 A. W. N. 170.

S. 423. (12) Enhancement of sentence—*cont'd.*

—but it has been held by a Full Bench of the Rangoon H. C. that though the substitution of 30 stripes for three months' rigorous imprisonment is an enhancement and therefore illegal, the substitution of a sentence of 30 stripes for one year's rigorous imprisonment or of 25 stripes for nine months' rigorous imprisonment or of 20 stripes for six months' rigorous imprisonment is not ordinarily an enhancement of sentence and in the case of a person under 16, the substitution of 15 stripes for six months' imprisonment or 10 stripes for three months' imprisonment is not an enhancement. 1929 Rang. 177 7 Rang. 319; 1929 Cr. C. 169; 119 I. C. 209; 30 Cr. L. J. 986, F. B., 2 Weir 487, 6 B. L. R. App. 95, *not fol* (Rat. 131, 17 A. 67, 23 B. 439 27 C. 175, 30 M. 103 F. B. 36 A. 465), *Ref.*

—where the trying M. is not empowered to order whipping the appellate court cannot alter a sentence of fine into one of whipping as it would amount to enhancement. 1930 Lah 318 31 Punj L. R. 264 31 Cr. L. J. 166; 120 I. C. 787; 1930 Cr. C. 350.

—substitution of rigorous imprisonment for a greater period in default of payment of fine in place of simple imprisonment is an enhancement of sentence. 45 A. 594

What does not amount to enhancement of sentence

—an order directing the accused to furnish security to keep the peace does not amount to an enhancement of sentence as expressly provided. 1905 P. R. 21, 20 Cr. L. J. 760, (Nag.) 20 Cr. L. J. 303 (A).

—order to pay cost does not amount to an enhancement of sentence. 29 M. 188, 47 M. 914, 26 M. 421.

—if the aggregate sentence of imprisonment imposed by the Appellate Court is less than the period of the original sentence, the imposition of fine does not amount to an enhancement of sentence. 30 M. 103, 36 A. 485, 27 C. 175, 1930 M. 193; 121 I. C. 125; 1930 Cr. C. 86, 23 B. 439, 1924 Pat. 563, the proper test being whether the accused really considers the fine as heavier sentence than imprisonment. 1930 Mad. 193; 31 Cr. L. J. 203; 1930 Cr. C. 66; 121 I. C. 125.

—where a sentence of one month's rigorous imprisonment and a fine of Rs. 5 or in default to one week's further imprisonment was altered to three days' imprisonment and a fine of Rs. 100 or in default to a further imprisonment of one month, there was no enhancement of sentence. 36 A. 485; 12 A. L. J. 827 24 I. C. 607, 23 B. 439, 30 M. 103, *doubted*, 27 C. 175 *Appr.*

(13) Amendment of finding.

—"amendment" means amendment of the main order of the court below and an Appellate Court cannot make any amendment where there has been no appeal against the main order. 41 A. 401

—a compromise may be substituted for conviction by way of amendment. 32 A. 153.

—order may be passed by way of amendment directing the disposal or restoration of property. 1897 A. W. N. 26, 3 A. L. J. 770.

S 423. (13) Amendment of finding—contd.

—where the accused is acquitted of the offence of theft the proper order is to direct that the property found in the possession of the accused should be restored to him. 18 C. W. N. 959: 22 I. C. 760

(14) Incidental or consequential orders.

—orders under ss. 517, 520 or 522 are incidental orders 29 C. 724, 46 M. 162, 3 A. L. J. 770, 19 C. W. N. 990, 27 A. 415, *contra*. 1 P. W. R. 1919, 33 P. L. R. 1919, 48 I. C. 510: 20 Cr. L. J. 30, 39 C. 1050: 16 C. W. N. 811.

—in confirming a conviction passed by subordinate M. the Dt. M. cannot pass an order for delivery of possession under s. 52, Cr. P. C. when no such order was made by the trying M., 39 C. 1050: 16 C. W. N. 811: 16 I. C. 176, 1 P. W. R. 1919: 48 I. C. 510 *fol.*, 19 C. W. N. 990: 30 I. C. 159, 27 A. 415 *Dist.*

—an Appellate Court cannot award compensation under s. 250 Cr. P. C., 28 A. 625, 39 C. 157.

—award of costs cannot be treated as incidental or consequential to the disposal of a revision petition within s. 423 (1) (d) for it does not necessarily follow from an order passed in revision. 48 M. 262, 86 I. C. 147, 48 M. L. J. 106, 1925 Mad. 438 F. B.

—an order under s. 471 (1) directing the accused to be committed to a lunatic asylum is a consequential order. 8 L. B. R. 290

—an order setting aside the order for security under s. 106 Cr. P. C. is an incidental order. 30 C. 101.

—under this clause the Appellate Court can exercise the powers conferred by s. 562 Cr. P. C., 24 A. 306, 29 M. 567

—an order directing payment of cost is an incidental order. 29 M. 188, 47 M. 914, 47 M. L. J. 365, 82 I. C. 141, (22 M. 153, 26 M. 421) *Dist.*

—sending back the case for the signature of the Hy. M. composing a Bench on judgment is an incidental order. 41 A. 217.

(15) Interference with the verdict of the jury.

—in an appeal from trial by jury the power of the appellate court is restricted by the provision of ss. 423 (2) and 537 Cr. P. C., 1928 Pat. 325: 108 I. C. 81, 29 Cr. L. J. 325.

—the H. C. cannot on an appeal from the unanimous verdict of the jury, interfere with it, in the absence of a misdirection by the Judge, where there is some circumstantial evidence. 46 C. 635, 10 Bom. L. R. 565.

—the appellate court should not disturb the finding of the Judge or the verdict of the jury on a simple issue of fact unless the verdict arrived at seems to be opposed to the entire weight of evidence. 1930 Cr. C. 231: 1930 Cal. 199.

—s. 423 (2) applies if it leaves to consider whether the verdict of the jury was erroneous owing to misdirection. 95 I. C. 393: 1926 Lab. 193: 27 Cr. L. J. 793.

S. 423. (15) Interference with the verdict of the jury—*contd.*

—when the reception of certain inadmissible evidence by the Court did not in fact occasion any failure of justice and where there was sufficient evidence before the jury to justify them, the Appellate Court would not interfere. 49 C L J 313

—where the Public Prosecutor applied for further adjournment and the judge refused to adjourn the case whereupon the P. P. opened the case with protest and informed the Court that he had no witnesses present to support the case, but the Judge directed the jury to return a verdict of "not guilty" as there was no evidence; held that it was misdirection as the P. P. did not say that he had no evidence but simply wanted time to produce evidence. 30 C. W. N. 190, 1926 Cal 581, 91 I C. 701, 27 Cr. L. J. 125

—where improper questions are admitted, the Judge should ask the jury to disregard such statements or if it is difficult for the jury to dismiss such evidence entirely from their minds it is preferable that new trial is held before a new jury 93 I. C 881 1926 Bom. 238 25 Bom. L R 281 27 Cr. L J 481

—if the appellate court set aside the verdict of the jury on the ground of misdirection it must be reversed in its entirety 22 C. 377, 23 C 975, 119 P. L. R 1004, 12 P. R 1904, 16 C W N 909.

—when the verdict of the jury is set aside the appellate court is not bound to direct a new trial 25 C 711, 2 C. W. N 369.

—when all the materials are before the appellate court and the case has prolonged for nearly two years and the verdict of the jury is erroneous owing to misdirection the appellate court may deal with the matter itself 1930 Cal. 370, 1930 Cr. C. 634, 21 C. 955, 25 C 23, 25 C 71, *Ref*

—verdict of the jury should not be reversed unless it is erroneous owing to a misdirection by the Judge or to a misunderstanding on the part of the jury. 32 M 179, 26 M. I., 26 C W. N 558, 71 I C. 367.

—the High Court's power of interference is limited to a case where there has been misdirection on a point of law or the jury have misunderstood the Judge's direction on a point of law. 32 C W N. 673, 47 C. L. J 483, 111 I C 323 1928 Cal 441, 29 Cr. L. J. 819, 1929 All 364, 30 Cr. L J. 692 116 I C 297.

—miscarriage of justice is not a sufficient ground for interference with the verdict, failure of justice must be the result of misdirection to jury. 1928 Pat 326, 29 Cr. L J. 325 108 I. C 81.

—the terms of s. 623 (2) are imperative and where there is no misdirection by the S. J. the H. C. cannot alter or reverse the verdict of the jury. 1927 Pot. 370, 103 I. C. 548, 28 Cr. L. J. 692

—but in every case of trial by jury and specially in murder cases the H. C. must be satisfied that the Judge's charge to the jury was adequate 1929 Cr. C. 390, 1929 Cal. 742.

—in a case tried by Jury the petition of appeal must state distinctly in what respect the law has been contravened. 1 W. R. 21.

—the H. C. on setting aside a verdict of the jury on the ground of irregularity, has jurisdiction to order retrial. 46 C. 212.

S. 423. (15) Interference with the verdict of the jury—contd.

—when the verdict is set aside there is no restriction on the power of the Appellate Court. 25 C. 711.

—the H. C. cannot go into the facts of the case. 39 A. 348, 39 A. 348, 25 C. 230.

—the power of the H. C. under S. 307 Cr. P. C. is wider. 21 C. 955, 9 A. 420.

(16) Appeal from trial with the aid of assessors.

—an appellate Court should always be very cautious in interfering with a judgment of a judge and assessors who had the advantage to mark the demeanour of witnesses. 17 C. 485, 2 Weir 462, 19 B. 51, 7 P. R. (1904) 19.

—appeal from trial held with the aid of assessors differ greatly from those governing appeals from the trial by jury, in the latter case the appeal is restricted by the provisions of ss 423, (2) and 537 Cr. P. C. whereas in the former case the whole case is open before the Appellate court 1928 Pat 326 · 103 I. C. 81 : 29 Cr. L. J. 325 : 9 A. I Cr. R. 545.

S. 424. Judgment of subordinate appellate courts.

—the judgment must be in conformity with the provisions of s. 367 Cr. P. C. 37 C. 91, 17 Bom. L. R. 1085, 4 N. L. R. 84, 2 Bur. L. J. 101 : 75 I. C. 296 : 24 Cr. L. J. 920.

—where in rioting case the judgment of the Appellate Court did not consider the case of each accused separately, it was not sustainable. 31 I. C. 175 : 16 Cr. L. J. 735 : 2 L. W. 988 : 91 C. 261 : 12 Cr. L. J. 43

—omission to write a judgment is so irregularity not curable by s. 537 (a) Cr. P. C. 17 Bom. L. R. 1085.

—a Dt. M. bearing an appeal under s. 250 (3) Cr. P. C. is bound to record a judgment in accordance with ss. 367 and 424 Cr. P. C. 3 Pat. L. T. 203 : 23 Cr. L. J. 261 : 66 I. C. 325.

—in case of the appellate judgment not being in accordance with law the H. C. may remand the appeal for rehearing and delivery of proper judgment. 7 C. W. N. 30, 37 C. 194, 1 Bom. L. R. 225, 1912 P. W. R. 43.

—an Appellate Court, which writes a judgment which the H. C. cannot follow without reference to the judgment of the Trial Court, obviously fails in the discharge of the duty imposed upon it by the law. 2 Lah. 308 : 64 I. C. 377 : 23 Cr. L. J. 9, 107 I. C. 665 : 29 Cr. L. J. 270.

—an appellate court cannot alter a conviction of an accused into one of abetment. 26 I. C. 142 : 15 Cr. L. J. 694.

—where the reason for upholding conviction was that the evidence for the prosecution was slightly stronger and the story as regards probability was far more likely it was not sufficient for conviction. 21 C. W. N. 550 : 40 I. C. 628 : 18 C. L. J. 698.

—the first duty of the Appellate Court is to find whether the conviction by the Lower Court against each of the accused persons is sustainable. 9 I. C. 261 : 12 Cr. L. J. 43, (c).

S. 424. Judgment of subordinate appellate court—*confd.*

—It is the duty of the Appellate Court to hear, with regard to each of the accused, with a judicial mind for the purpose of considering whether he was guilty or not having regard to the charges against him and the special evidence directed to him and his particular defence. 48 M. L. J. 504, 2 L. W. 958, 1918 M. W. N. 129.

—an Appellate Court's judgment which does not discuss the evidence in the case for the defence and which does not contain any finding with regard to the matters raised in the Lower Court and from which it is not possible to ascertain what the occurrence was, is not a judgment which satisfies the requirements of the law and the appeal must be reheard 25 Cr. L. J. 901; 81 I. C. 437 (C), 28 Punj. L. R. 461; 1927 Lab. 797, 10 Lab. L. J. 347.

—an appeal under s. 476 B Cr. P. C. must be dealt with as an ordinary appeal under this section; it cannot be summarily dealt with by the appellate court nor can it be sent back to the lower court for fresh order 54 C. 355 31 C W N 281 1927 Cal. 284; 100 I. C. 351.

S. 426. (Suspension of sentence pending appeal, Release of appellant on bail.)

—a sentence cannot be suspended until an appeal has actually been filed 12 W. R. 47, 5 M. H. C. R. App 1

—an order suspending the sentence should not be passed unless very special cause is shown 92 I. C. 703; 1926 Nag. 279; 27 Cr. L. J. 319.

—only the Appellate Court can suspend the execution of the sentence. 2 Weir 536, 12 W. R. 47, 4 M. H. C. R. App 1

—an order for detention under a 10 Reformatory Schools Act of this sec. nor is it punishable 16 Cr. L. J. 134 (M).
use on bail although the offence

—it is only when the convicted person has been released that the period of suspension shall be excluded. 2 Weir 536.

—a person proceeded against under Chapter VIII Cr. P. C. is not a person convicted and consequently the provisions of granting bail to a convicted person does not apply to him. 1930 Pat. 274; 11 Pat. L. T. 261; 1930 Cr. C. 455. 9 Pat. 131.

—mere previous respectability is *per se* no sufficient ground for giving bail to a convict. 92 I. C. 903; 27 Cr. L. J. 319 1926 Nag. 279.

S. 427. (Arrest of accused in appeal from acquittal.)

—the Allahabad H. C. considers the course desirable 9 A. 528.

—the warrant of arrest is not an order to the prejudice of the accused within the meaning of s. 432 (2). 8 L. B. R. 290.

S. 428. (Appellate Court may take further evidence or direct it to be taken)**The object and scope of the section**

—the object of the sec. is to prevent the escape of a guilty man or the vindication of an innocent person through the careless-

S. 428. The object and scope of the section—contd.

ness or ignorance of the M. in recording circumstances essential to the elucidation of truth. 18 W. R. 31, 88 I. C. 595 : 26 Cr. L. J. 1171 : 1925 Pat. 526.

—this sec. is applicable only to the Appellate Court. 6 C. L. J. 251, but proceedings under s. 125 Cr. P. C. is neither appellate nor revisional. 30 Cr. L. J. 221 (Pat).

—the sec. does not apply to cases under s. 195, 33 M. 90, or to proceedings under s. 437 by a S. J. or a Dt. M. 6 Cr. L. J. 251

—this sec. does not provide for the examination of the accused after the witnesses have been examined on remand. 1925 Pat. 414 : 86 I. C. 459 - 6 Pat. L. T. 154.

—this sec. has no application to a case where the Session Judge remands a case to the Magistrate on the ground that the provisions of s. 256 Cr. P. C. were not complied with but allows the sentence and conviction to stand, such remand order being illegal. 53 B. 578 : 31 Bom. L. R. 593 : 1929 Cr. C. 130 : 1929 Bom. 309 : 121 I. C. 588 : 31 Cr. L. J. 303.

If the Appellate Court thinks additional evidence necessary.

—the word "necessary" does not mean that it should be impossible to pronounce judgment without the additional evidence. 25 Cr. L. J. 401 : 77 I. C. 481 : 1925 M. 106.

—there is no restriction in the wording of the sec. as to the nature of evidence. *Above case.*

—there is nothing in the sec. to preclude an appellate court from taking additional evidence in order to ascertain the value of the defence evidence. 55 M. L. J. 676 : 1928 Mad. 1174 : 1928 M. W. N. 777 : 113 I. C. 325 : 30 Cr. L. J. 133.

—where further evidence is found to be necessary, the proper course is to proceed under cl. (1). 31 C. 710.

—the power may be exercised at any time. 8 M. L. T. 418.

—it is a matter entirely within the discretion of the appellate court whether in the circumstances of a particular case there should be a retrial or additional evidence should be taken in the appeal when it is complained that the trial court wrongly refused to summon certain witnesses. 77 I. C. 481 : 25 Cr. L. J. 401 : 1925 Med. 106.

—the court recording reasons can direct further evidence to be taken on the side of the prosecution but it cannot direct the taking of the evidence of a co-accused who had not appealed. 93 I. C. 255 : 1926 Lab. 309 : 27 Cr. L. J. 463.

—additional evidence to prove a fact may be dispensed with by the admission of the pleader for the accused, the procedure being at most an irregularity curable by s. 537 Cr. P. C. 52 B. 686 : 1928 Bom. 241 : 30 Bom. L. R. 646 : 112 I. C. 110.

—the necessity for taking additional evidence must be apparent from something on the record and cannot be derived from external information *eg.*, by affidavits that fresh evidence has been discovered which shows the statement of a witness to be incorrect,

S. 428. If the Appellate Court thinks additional evidence necessary—*contd.*

3 L. B. R. 114, 10 M. L. T. 506, or from the fact that some fresh evidence has been discovered after the filing of the appeal 9 M. L. T. 323.

—the sec. does not empower to take additional evidence in a case where there is no evidence *legally capable of sustaining the charge* but when the evidence is not quite satisfactory. 18 W. R. 31.

—the appellate court will take additional evidence to supply a formal defect when the conviction for a serious offence is otherwise maintainable. 42 M. 885.

—when the lower court refused to examine the witnesses produced by the defence, 19 M. 375, 3 P. L. J. 632 or for the prosecution 36 M. 457, which has prejudiced the party the appellate court may direct the lower court to take their evidences 16 A. L. J. 325; 1 P. L. J. 99, 31 C. 710.

—order of remand for taking additional evidence must include the setting aside of conviction by the lower court. 84 I. C. 457; 40 Cr. L. J. 319; 26 Cr. L. J. 313; 1925 Cal. 172.

—the S. J. has power to examine material witnesses named in initial report but not included in the *chalan*. 2 L. L. J. 349, 23 P. R. 1917 *Ref.*

—the power should not be exercised when the prosecution had ample opportunity to produce witness. 5 A. 217.

—a court having once issued process, is bound to exhaust all the processes allowed by law, unless it is clearly shown that the accused is guilty of wilful obstruction and delay. 3 Pat. L. J. 632; 47 I. C. 274; 19 Cr. L. J. 902

Appellate Court must record reasons.

—before directing to take additional evidence the Appellate Court must record its reasons for so doing. 42 M. 885, 8 M. L. T. 418, but omission thereof is mere an irregularity which is curable by s. 531. 9 M. L. T. 406; 10 I. C. 290; 12 Cr. L. J. 240.

Examination of accused

—this sec. does not provide for the examination of the accused after witnesses have been examined on remand by the Appellate Court 6 Pat. L. T. 154; 86 I. C. 459; 1925 P. 414

—s. 342 Cr. P. C. which applies to original trial does not apply to evidence taken under s. 428 Cr. P. C. by the appellate court; *the evidence may be taken by the appellate court properly be be appellate L. R. 651*
12 M. 451.

Further investigation by police

—further investigation by the police cannot be ordered if the case had been originally started by a complaint in court. 1900 A. W. N. 130; 16 A. W. N. 73.

S. 428. Chemical examiner's report when not tendered.

—when the chemical examiner's report was not tendered at the trial the appellate court cannot send for it and admit it in evidence unless the provisions of sec. 428 were complied with. 21 A. L. J. 869.

Findings of Lower Court cannot be called for.

—the Appellate Court in directing the Lower Court to take additional evidence cannot call for its finding and the lower court cannot give any finding. 9 M. L. T. 406 : 10 I. C. 290, 16 Cr. L. J. 797 (Mad.) : 1914 M. W. N. 778 : 26 I. C. 671 : 16 Cr. L. J. 79, 3 B. L. R. A. C. 62, but where disregarding the provisions of the sec. such finding is called for the order will be set aside and the case will have to be retried. 9 M. L. T. 406 : 10 I. C. 290 : 12 Cr. L. J. 240.

Fresh sentence cannot be passed.

—the Appellate Court can rehear the appeal after obtaining the additional evidence. 3 P. L. J. 632 : 47 I. C. 274, but cannot pass a fresh sentence which may be the subject of further appeal. 27 C. 372.

No further appeal in case of dismissal.

—when an appeal is dismissed after taking additional evidence under this sec. the appellant has no further right of appeal. 27 C. 372, 8 W. R. 59, 15 W. R. 33, 6 B. H. C. R. 64.

Power of the High Court.

—both under the Cr. P. C. and under s. 107 of the Govt. of India Act of 1915 the High Court has full jurisdiction and power in criminal revision, to direct the Appellate Court to rehear the appeal after obtaining additional evidence certified by trial court. 3 Pat. L. J. 632 : 47 I. C. 274 : 19 Cr. L. J. 902, 1 Pat. L. J. 99.

—the H. C. may admit in evidence a copy of the notification under s. 423 Cr. P. C. 44 M. L. J. 557 : 72 I. C. 515 : 24 Cr. L. J. 433.

Sub-sec. (3) jurors or assessors should not be present.

—the Court of Sessions is in only one instance authorised to record evidence in the absence of the jury or the assessors and that is when additional evidence is called for by the Appellate Court. 15 A. 136.

S. 429. (Procedure where Judges of Court of appeal are equally divided).

—this sec. applies not only to appeals but to revisional proceedings. 40 M. 976 : 33 M. L. J. 121 : 45 I. C. 261, 27 C. 522, 27 C. 501 and also to reference 15 B. 542.

—cases governed by this sec. cannot be referred to a Full Bench. 40 M. 976 : 33 M. L. J. 12 : 19 Cr. L. J. 501, 29 C. W. N. 475.

—the third judge cannot differ from the referring judges on points agreed to by them, 22 C. W. N. 745 : 28 C. L. J. 33, the third judge may consider all the points involved, before he delivers judgment, 38 C. 202 but he cannot consider the case of the accused not referred to him. 33 C. 202.

S. 429. (Procedure where Judges of Court of appeal are equally divided)—*contd.*

—a third judge to whom reference is made under s. 422 Cr. P. C. cannot make a reference to a Full Bench. 29 C. W. N. 475 : 86 I. C. 979 : 1925 Cal. 1040 : 26 Cr. L. J. 915.

S. 430. (Finality of orders on appeal.)

—a sentence is called final when it cannot be called in question by any court or authority. 12 C. 536.

—where the Appellate Court has disposed of the appeal and signed the judgment it cannot rehear the appeal. 1 Pnt. L. T. 174 : 1923 Pat. 237.

—an order rejecting an appeal on the ground of being time-barred is final. 19 B. 732, 1887 P. R. 24.

—an order rejecting an appeal summarily is final, 23 B. 50 but such order for non appearance of the appellant is improper and the appeal may be reheard. 7 M. A. C. R. App. 29, 5 N. L. R. 76, 46 M. 382.

S. 431. (Abatement of appeals).

—an appeal other than an appeal under s. 471 Cr. P. C. or an appeal from a sentence of fine abates on the death of the appellant.

recoverable as
order of compen-
1903 P. R. 24.

—the principle of this sec. applies to revision, 1919 P. R. 8 : 10 P. W. R. 1919 : 20 Cr. L. J. 214 : 49 I. C. 274.

—the object of the addition of the words "except an appeal from a sentence of fine" was clearly to prevent the estate of a deceased person being damaged. *Abote case*

S. 432. Reference by Presidency Magistrate to H. C.

—this sec. applies only to Presidency Mts. 22 S. L. R. 201 : 1928 Sind. 69, 105 I. C. 802 : 28 Cr. L. J. 978.

—a Pr. M. cannot refer without hearing the case. 1 Bom. L. R. 52.

—reference under this sec. must be on a point of law only. Rat. Un. Cr. 838, 539.

—the power of reference is confined to questions of law which the M. requires to decide in order to perform his duty in disposing of the case or in other words unless they are matters upon which he has a duty to make up his mind. 34 C. W. N. 13 : 1929 Cal. 765 : 1929 Cr. C. 468 : 1929 Cal. 756 F. B.

—where a case was referred to the H. C. on the ground that the sentences passed on the accused for the offence under sec. 1. P. C. was ridiculously light, held that though the accused served the sentence of imprisonment actually passed, the H. C. impose a further sentence for a substantive period in a case. 93 I. C. 1053 : 1926 Bom. 256 : 27 Cr. L. J. 537.

S. 432. Reference by Presidency Magistrate to H. C.—*contd*

—upon reference, the H. C. only deals with the particular points of law referred to it. 33 C. 193.

—except in cases where there is a reference under this sec. the H. C. cannot and will not express an opinion upon any question unless it is brought before it in the ordinary way by application for revision. 9 Cr. L. J. 248; 1 B. L. R. 4 Cr. but see sec. 438 Cr. P. C.

—the order passed is conclusive both as to the merits of the case and as to the *quantum* of punishment 1890 A. W. N. 225.

—on a reference under this sec. the prosecution is to make out that an offence has been committed, so the prosecution must begin. 19 C 350.

—a trying M. cannot seek advice from District M. on a point of law. 37 B 144.

S. 433. (Disposal of case according to decision of H. C.)

—in a reference to the H. C. as to whether upon the facts stated any offence has been committed, the prosecution has to make out that an offence has been committed, so the counsel for the prosecution has the right to begin. 19 C. 380.

—the H. C. sitting in appeal cannot review its order passed by it under this sec. Ratanlal 638.

—the order of the H. C. on reference under s. 432 Cr. P. C. is conclusive. 1890 M. W. N. 225.

S. 434 (Power to reverse questions arising in original jurisdiction of H. C.)

—it is discretionary with the single judge to reserve a question and refer under this sec. 10 B. H. Cr. R. 75.

—where counsel for the accused asked for a reservation under this sec. and it was refused by the judge, the statement of the judge was held to be conclusive. 22 B. 112.

—the point of law to be referred under this sec. must arise in the course of trial and not before the accused is called upon to plead. 28 C. 111.

—the H. C. has the power on reference under this sec. to review the whole case and to determine whether the admission of the rejected evidence would have affected the result of the trial. 25 W. R. Cr. 36, 1 C. 207, 10 C. L. J. 13, 17 C. 642, 4 C. W. N. 433, 10 Cr. L. J. 193, 32 B. 111, 2 B 61

—the power which the H. C. exercises under this sec. is that of review and the court is a court of reference and revision. 8 B. 200, 3 L. B. R. 75 Ref.

—where on the application of the prisoner's counsel a question of law has been reserved under this sec. the counsel for the prisoner

of single judge cannot be
the H. C. 1 P. R. 1909:

as no power to alter o
the exercise of its re

S. 434. (Power to reverse questions arising in original jurisdiction of H. C.)—*contd.*

Divisional jurisdiction 7 A 672: 10 B 176, 23 B 50, 5 W. R. 61, 19 Bom L R 695

—a High Court Judge trying a Sessions case has jurisdiction under this sec to refer a question of law to a divisional Bench of the H C 1927 Rang 69-99 I C. 1013: 28 Cr. L. J. 213

S. 435. (Power to call for records of inferior courts.)

N. B.

In sub-sec (1) the following has been added by the New Amendment of 1923 "and may, when calling for such record, direct that the execution of any sentence be suspended and if the accused is in confinement, that he be released on bail or on his own bond pending the decision of the court."

Sub-headings of notes.

- (1) Scope of the section.
- (2) Courts of concurrent jurisdiction.
- (3) Meaning of the term "inferior court" and its power.
- (4) Powers of H. C., S. J., Dt. M. and S. D. M. under this section.
- (5) When the superior court can interfere under this section.
- (6) When the superior court cannot interfere.
- (7) Power of revision after dismissal.
- (8) Calling for record.
- (9) Judicial proceeding or not.
- (1) Scope of the sec

—the words of the sec. are very general—29 B. 543, 15 C. 608, 31 M. 133: 18 M. L. J. 57, and although a conviction under a particular Act shall not be open to appeal or revision the H. C. will revise an order of M. without jurisdiction. 2 S. L. R. 20: 10 Cr. L. J. 233.

—"propriety of any finding" is wide enough to cover findings of fact as well as of law, 10 B. 131, 12 B. 377, 14 B. 331, 10 C. 1047 and misreading of documentary evidence. 28 B. 479.

—the object of the sec. is to set right some patent defect of error and not to give the H. C. a roving commission to look for some trace of possible error. A. W. N. 1899, 135.

—where the continuance of pending or al proc
ab e proc
is ma
and

—the Dt. M. cannot order this sec. to Local
an order of acquittal by the trial M. on re

S. 435. (1) Scope of the section—contd.,

is competent to prefer an appeal against such order. 1928 Lah-843 : 110 I. C. 224 : 29 Cr. L. J. 672.

—the order of a M. acting under s. 144 Cr. P. C. is not that of a court. Consequently it is not revisable by the H. C. 1923 M. W. N. 779 : 55 M. L. J. 621. 1928 Mad. 1103 : 52 M. 69 : 113 I. C. 279 : 30 Cr. L. J. 119.

—but by the removal now of sub-sec. 3 of s. 435 Cr. P. C. proceedings under chap. XII of the Code become liable to revision and an order under s. 145 Cr. P. C. is revisable. 1929 Mad. 847 : 1929 M. W. N. 708 : 1929 Cr. C. 615. 31 Cr. L. J. 190 : 120 I. C. 895.

(2) Courts of concurrent jurisdiction.

—the revisional jurisdiction of the Dt. M. and S. J. is concurrent with that of the H. C. But though they have concurrent

first he made to the court
perate as a bar to the

court. 36 C. 443, 43 A.

10, 18 A. 268, 24 A. W. N.

I. L. J. 608, 3 Pat. L. W.

115, 3 Pat. L. J. 302, 41 A. 387, 19 A. L. J. 425, 43 A. 497, 25 O. C. 37, 1923 M. W. N. 837, 18 L. W. 236, 45 A. 656, 28 A. 263, 91 I. C. 247 : 1926 Nag. 283 : 27 Cr. L. J. 71.

—but when the rule has once been issued it will not afterwards discharge the rule on the ground that the petitioner ought to have moved the S. J. at the first instance. 50 C. 432.

(3) Meaning of the term "inferior court" and its power.

—"inferior" means statutorily incompetent to hold or exercise equal powers. It carries with

—the word "subordinate"
"inferior" in secs. 435 and 436
term in ss 435 and 436 was in
Sessions and the D. Ms. are c
Jur. 73 F. B. 25 P. R. 1903. 9 :

—the word "inferior" has been substituted for the word
Dt. M. is not subordinate
the revisional author-
remain unquestionable.

ordinate" and therefore
100, 8 M. 18 F. B., 7 A.
Cr. L. J. 104.

—as a court of revision the Dt. M. is not inferior to the S. J. But when he passes an order as a court of original jurisdiction he is inferior to the S. J. 24 Cr. L. J. 616 (Oudh), 12 O. 473, 1889 A. W. N. 100, 1904 P. R. 15. But now the "explanation" has made the point clear.

—the Dt. M. exercising original or appellate jurisdiction is inferior to the Sessions Judge. 89 I. C. 246 : 1925 All. 591 : 26 Cr. L. J. 1282.

S. 435. (3) Meaning of the term "inferior court" and its power—contd

—a single Judge of the H. C. is not inferior to the Divisional or Full Bench of the H. C. for the purposes of this sec. 1909 P. R. 4, 1909 P. R. 8.

—a Bench of the H. C. sitting as a court of revision cannot under s. 439 alter or interfere with a conviction imposed by a single judge of the H. C. ss. 435 to 439 clearly contemplate interference only with the findings of any inferior court. 92 I. C. 851 : 1926 Nag. 323 : 27 Cr. L. J. 339

—a court acting under s. 3 of the E. B. Assam Disorderly House Act is criminal court within the meaning of this sec. and the H. C. has jurisdiction to interfere under ss. 435 and 439. 37 C. 287.

—the provisions of this sec. do not apply to Dt. Ms. but to criminal courts inferior to the H. C. When exercising jurisdiction under the election rules of the District Board the Dt. M. does not act as criminal court and therefore the H. C. cannot interfere in revision with the order of the Dt. M. under s. 195 (5). 1929 All. 931, 1929 Cr. C. 659, 9 Bom. L. R. 1347 *Rel. on.*

—the Secretary to the Govt. of Bengal issuing a warrant under the Goondas Act (Beag. Act. 1 of 1923) is not an officer or court possessing criminal jurisdiction, and is not an inferior court. 51 C. 460.

—a M. hearing an appeal under s. 86 of the Bombay District Municipal Act is not a criminal court within s. 435. 9 Bom. L. R. 1347.

—so far as the H. C. is concerned the Dt. M. is to act either through the Government Advocate or through the Legal Remembrancer as he may be advised to be the proper course. A reference

L. J. 1277.

—a Municipal M. appointed to deal with offences against the Calcutta M. Act is a court of inferior jurisdiction and its order is subject to revision by the H. C. under ss. 435 and 439 Cr. P. C. 29 C. W. N. 898 : 90 I. C. 317 : 52 C. 962 : 1925 Cal. 1251.

—a Dt. Registrar is not an inferior "criminal Court." 14 Bom. L. R. 976 : 13 Cr. L. J. 845, 17 I. C. 717.

(4) Power of H. C., S. J., Dt. M. and S. D. M. under this sec.

—(per C. C. Ghose, J.) the H. C. has undoubted power to quash pending proceedings in subordinate criminal courts and it is the bounden duty of the H. C. to interfere when it is brought to its notice that a person has been subjected or is about to be subjected to the harassment of an illegal prosecution. *per Cuming and Gould J. J.*—The power of interfering with the pending criminal proceedings should be exercised only in exceptional cases. 39

S. 435. (4) Power of H. C., S. J., Dt. M. and S. D. M. under this sec.—contd.

J. 236 : 82 I. C. 266 : 25 Cr. L. J. 1258 F. B., (22 C. 131, 25 C. 233, 26 C. 786, 13 C. L. J. 43, 12 C. W. N. 678) *Ref.*

—where the continuance of pending criminal proceedings against an accused person would mean an abuse of the processes of the court and the charge laid against him is one which is manifestly unsustainable in law, the H. C. is bound to interfere and stop the prosecution. 40 C. L. J. 283, 22 C. 131 *Fol.*

—the H. C. has no power to review its judgment dismissing a criminal appeal even though fresh materials throwing doubt on the conviction are placed before it. The proper procedure is to make reference to the Local Govt. under ch. XXIV Cr. P. C., L. R. 3 A. 185 Cr.

—the High Court's powers of revision is not co-extensive with the powers in appeal. 1927 M. W. N. 716.

—it is competent to the H. C. to quash or set aside the proceeding pending before an inferior court at any stage for proper reasons. 35 M. L. T. 77 : 47 M. 722 : 81 I. C. 785 : 25 Cr. L. J. 1009.

—an order of the Secretary to the Bengal Government declaring a person to be a goonda and directing him to leave Bengal on a specified date passed under Bengal Act I of 1923, is not open to revision by the H. C. 51 C. 460 : 83 I. C. 50.

—where there was absolutely no dishonesty in commercial transaction and where the facts disclosed did not constitute an offence under s. 420 I. P. C. the H. C. would interfere in revision and quash the proceedings so as to prevent an abuse of the process of court. 40 C. L. J. 283

—the H. C. seldom interferes in the preliminary stage with the discretion of a M. taking action under the preventive secs. of Cr. P. C. and when the materials on which the orders are passed are clearly insufficient to support the orders the H. C. will interfere. 28 C. W. N. 23 : 38 C. L. J. 198.

—the H. C. has the power in revision to interfere with the order of the Chief Presidency Magistrate under the Maintenance Orders Enforcement Act of 1921. 52 B. 262 : 109 I. C. 337 : 30 Bom. L. R. 353 : 29 Cr. L. J. 513 : 1928 Bom. 117.

—the H. C. has power at any stage of a case to interfere to exercise the power of revision. 22 C. 131 : 20 C. 543 : 28 M. L. J. 505 : 17 M. L. T. 398 : 1915 M. W. N. 365 : 29 Ind C. 109.

—when an application for revision can be entertained by a Dt. M. or a Session Judge the H. C. will not entertain the revision unless either of the former has been approached. 29 Cr. L. J. 618 : 109 I. C. 810 : 10 A. I. Cr. R. 333 : 1929 Nag. 13.

—the H. C. cannot revise an extra-judicial order passed by a M. 1883 A. W. N. 25, 1885 A. W. N. 258, 19 M. L. J. 566 : 11 Cr. L. J. 69.

—record may be called for at any stage even after the prisoner has served out his sentence. 7 A. 135.

S. 435. (4) Power of H. C., S. J., Dt. M. and S. D. M. under this sec.—contd.

—this sec. does not in any way impliedly restrict the jurisdiction conferred on Ms. to inquire into offences. 29 M. 126 F. B.

—the S. J. or the M. has no jurisdiction under this sec. outside the limits of their Division or District. 26 M. 137, 30 M. 136.

—a D. M. can call for and deal with the record of any proceeding before any M. of whatever class in his own district. 12 C. 473 F. B., but he cannot record his evidence. 3 Bom. L. R. 677.

—the revisional powers of a Dt. M. do not include the powers conferred on a Court of Appeal under sec. 195, sub-sec. (b), 1908 A. W. N. 74. 5 A. L. J. 562; 7 Cr. L. J. 304.

—this sec. applies both to judicial and executive proceedings, the essence of judicial proceeding is a declaration of the law on the particular case which has to be arrived at as a decision of certain relations. The essence of an executive proceeding is an act to be done under such and such circumstances and required to when necessary with a view to determine whether in a particular case they call for or justify some particular. Rat. Un. C. 129, 29 M. 100, *contra* 10 C. L. R. 14, 20 A. 563, but see 4 P. R. 1908; 86 P. W. R. 1908; 7 Cr. L. J. 202, 11 C. W. N. 266 (note), 360, 44, 2 Weir 538.

—the H. C. or the S. J. has no jurisdiction to revise the orders of the civil court under s. 195 or s. 476 Cr. P. C., 8 C. W. N. 78, 26 M. 98, 139, 26 S. 785, 31 A. 38, 26 A. 249 F. B., 26 A. 1, *overruled* 25 A. 172, 4 L. B. R. 138; 7 Cr. L. J. 416, 4 L. S. R. 339, 9 Cr. L. J. 24 *contra*, 5 P. R. 1908; 7 P. W. R. 1903, 7 Cr. L. J. 281, 248; 103 P. L. R. 1908 F. B., 4 N. L. R. 140; 8 Cr. L. J. 351, or the order of criminal Courts exercising civil powers, 9 Bom. L. R. 1347; 6 Cr. L. J. 425, or the order of the Income Tax Collector taking action under S. 476, 3 S. L. R. 66; 10 Cr. L. J. 395, or the order of the Revenue Court. 36 M. 72.

—the power of the sub-divisional M. is limited by sub-sec. (2). 7 M. 560, 15 M. L. J. 489; 3 Cr. L. J. 180.

—a first class Magistrate is inferior to the District M., therefore an order of discharge passed by the former can be set aside by the latter. 30 Punj L. R. 448; 30 Cr. L. J. 490; 115 I. C. 539.

—if a Dt. M. thinks that an order of the Sub-divisional M. is not legal or proper, he can report the matter to the H. C. 26 M. 130.

—the S. J. may examine the record of an inferior criminal Court for the purpose of satisfying himself as to the propriety of the finding and may report to the H. C. if a case any finding is improper. 49 A. 551; 1927 All. 475; 28 Cr. L. J. 399; 100 I. C. 1055.

—the S. J. cannot revise the order of a Dt. M. under this sec. and S. 437 refusing to direct further inquiry to be made. 22 C. 573, 17 C. W. N. 451; 17 C. L. J. 608; 18 Ind. C. 683; 14 Cr. L. J. 123.

—in a case of discharge under ss. 342, 355 and 506 I. P. C. an order of retrial after a lapse of about two years amounts to a vesty of justice. 1928 Leh. 178; 111 I. C. 575; 29 Cr. L. J. 895.

S. 435. (4) Power at H. C., S. J., Dt. M., and S. D. M. under this sec.—*contd.*

—when application has been made under this sec. to the D. M. any further application to the S. J. is expressly forbidden. 17 M. L. J. 153; 2 M. L. T. 24; 5 Cr. L. J. 132, 28 C. 102.

—when one revision application is filed before the Session Judge or Dt. M. it bars another application before the other. 1930 All. 257 1930 Cr. O 369; 1930 A. L. J. 521, 26 M. 477, 110 P. R. 1912 Cr. Ref.

—a D. M. cannot call for the record of the S. J. 2 N. L. R. 149; 4 Cr. L. J. 422, 23 C. 250, 13 W. R. Cr. 42, 8 B. 307, 9 A. 362, 12 A. 434, 1912 M. W. N. 813

—the Dt. M. cannot question the propriety of an order passed by a court of Sessions. He is to move the Government to file an application in revision. 92 I. C. 743; 27 Cr. L. J. 327; 24 A. L. J. 224

—a Dt. M. cannot revise the order of a trial M. and direct retrial 102 I. C. 511; 28 Cr. L. J. 575; 28 Punj. L. R. 166; 1927 Lah. 733.

—the H. C. will not entertain an application for revision when the S. J. or M. has concurrent jurisdiction, whether final or not, save on some special ground, unless previous application has been made to the lower courts. 36 C. 643, 14 C. 887, Rat. Un. Cr. 499, 1890 A. W. N. 161, 1888 A. W. N. 132, 14 B. 331, 1887 A. W. N. 105, 18 Cr. L. J. 863, 19 Cr. L. J. 589; 3 P. L. J. 302

—the H. C. does not ordinarily interfere with the details of inquiry or investigation under s. 202 Cr. P. O. and particularly will not interfere on the ground that it was inadequate. 116 I. C. 46; 30 Cr. L. J. 554; 10 Pat. L. T. 618.

—a Dt. M. is not competent to refer the proceedings of the Session Court to the H. C. 41 B. 47, 46 A. 851, 28 A. 91, 36 A. 378, 10 A. 146, 18 C. 186, 23 C. 250, 9 A. 362, 2 N. L. R. 149.

—where a number of accused are convicted and some only apply in revision to the H. C. the court has jurisdiction to consider the case of the non-appealing accused also. 77 I. C. 723; 1924 Lah. 585; 25 Cr. L. J. 435.

—a revision on the assumption that the Sub-Magistrate is a better Judge of fact than the Sub-Divisional M. is not legal 1923 Mad. 369; 29 Cr. L. J. 325; 108 I. C. 80

(5). When the superior court can interfere under this sec.

—the H. C. can interfere under this sec. where the M. acts unreasonably. 35 C. 400, 37 C. 91, 14 C. W. N. 99 (note), 13 C. W. N. 103 (note), 14 C. W. N. 138 (note), 2 C. 110, or when a prisoner has been subjected to unnecessary harassment. 22 C. 131, 20 W. R. Cr. 23, 3 P. W. R. 1909; 9 Cr. L. J. 154.

—when the M. contravenes any provision of law the H. C. can interfere, but where the M. has only erred in the exercise of the discretion vested in him such as permitting the accused to cross-

S. 435. (5) When the superior court can interfere under this sec.—*contd.*

—examine the witnesses at the end of the examination of all the witnesses, the H. C. will seldom interfere 1929 Cal. 593 : 33 C. W. N. 535 : 119 I. C. 808 : 1929 Cr. C. 222 : 57 C. 44.

—the H. C., has jurisdiction to revise an order passed under sec. 16 Reformatory Schools Act, without jurisdiction. Rat. Un. Cr. 494, 21 A. 391 F. B. 14 B 381.

—the High Court's power of revision of the proceedings of the Presidency M. is only under s. 15 of the Charter Act, 24 and 25 Vict. Ch. 104 27 C. 126, 33 C. 1282, 6 C. L. J. 705, 27 B. 84, 6 A. 40, *contra*, the H. C. has such power under s. 439 read with sec. 423, 30 C. 994, (15 C. 608, 26 C. 746, 28 C. 652, 667, 27 B. 84, 7 C. W. N. 521) *Ref.* (27 C. 126, 6 C. L. J. 705, 33 C. 1282) *Discussed and Diss.*

—the H. C. will interfere with interlocutory orders only under exceptional circumstances. 25 C. 233, 26 C. 786, 39 M. 561.

—the test is whether the bare statement of the facts of the case without any elaborate argument convinces the H. C. that it is a fit case for interference. 25 C. 233, 2. S. L. R. 25, 10 Cr. L. J. 237, 9 Cr. L. J. 270.

—the H. C. can under this sec. and sec. 439, revise the proceedings of the M. under s. 113 of the Indian Railways Act, 13 P. R. Cr. 1891.

—orders passed under s. 476 are open to revision of the H. C. under this sec. 33 M. 48 F. B. 26 M. 93 *overruled*.

—sub-sec. (3) of this sec. does not prevent the H. C. from reviewing an order which though purports to be made under s. 144, is not in fact made under that sec. 19 C. 127, 3 C. W. N. 572, 593 : 25 C. 852, 8 C. W. N. 373, 13 C. W. N. 188 : 11 Cr. L. J. 11, 16 C. 80, 27 C. 918, 28 C. 416, 7 C. W. N. 174, 12 C. W. N. 1044, 24 M. 45, 24 B. 527, 14 B. 165, the same principle applies to orders purporting to be made under Chapter XII, 26 C. 188, 27 C. 259, 981, 7 C. W. N. 174 : 25 A. 537, 24 B. 527 : 29 A. 237, but in such cases the H. C. has no jurisdiction to interfere if the M. does not act without jurisdiction. 31 M. 150 : 1902 A. W. N. 74 : 26 A. 144. 26 C. 625, 4 C. W. N. 613, 27 C. 892.

—when the orders under ss. 145, to 147 are *ultra vires* or defective the H. C. has the revisional power. 30 C. 443, 32 C. 771, 33 : C. 33, 14 C. W. N. 107 (note), 14 C. W. N. 78, 36 C. 370, 986, 30 C. 110, 14 C. W. N. 107 (note), 31 M. 416, 35 C. 795, 6 C. L. J. 182, 25 A. 537, 5 C. W. N. 71, 6 C. W. N. 469, 14 C. W. N. 80, 11 P. W. R. 1909 : 12 P. R. 1909. 11 Cr. L. J. 61, 135 P. L. R. 1902 : 23 P. R. 1902 : 6 Cr. L. J. 113.

—but if the orders are generally in compliance with the requirements of law, the H. C. will not interfere. 1907 A. W. N. 50, 25 A. 537, 32 A. 132, nor where the parties are not prejudiced, 30 A. 41.

S. 435. (6) When the superior court cannot interfere under this section.

—it is not the practice of the H. C. to entertain an application in Revision against the order of the M. under s. 133 Cr. P. C., unless the party aggrieved has first moved the S. J. under ss. 435 and 438. 48 C. 534, but a D. M. may refer a case under s. 133 to the H. C. under s. 438, 14 C. W. N. 55 but see Rat Un. Cr. 336.

—the order of the Dt. J. declaring certain person to be tout cannot be revised under this Chapter, 31 A 59

—difference of opinion between the trying M. and the S. J. as to the credibility of certain witnesses is no ground of interference by the H. C. 18 W. R. Cr. 7, 2 Bom. L. R. 334, 18 W. R. Cr. 39.

—proceedings under Ch. XII Cr. P. C. are excluded from the scope of sec. 535 (3). 67 I. C. 584: 23 Cr. L. J. 424.

—a Dt. M. disagreeing with the trial Magistrate as to the estimate of evidence cannot direct further inquiry. 1927 All. 754: 190 I. C. 822: 28 Cr. L. J. 342.

—a Dt. M. cannot order a retrial of a case. He can in proper case order a further inquiry into the complaint. 1930 All. 257: 1930 Cr. C. 369: 1930 A. L. J. 521.

(7) Power of revision after dismissal.

—there being no provision in the Code for dismissal of a revision petition for default of appearance, the order of dismissal is no "judgment" at all rehearing the revision application of the accused may not entertain a s

and the court cannot rehear a case 44 M. L. J. 27. But when the H. C. in revision, not on the application of the accused but on reference by the S. J. comes to a conclusion that there is no ground for revision the accused is not thereby deprived of his right to apply for revision 45 A. 11, 8 L. B. R. 377.

—as a matter of general discretion if a man makes an application to the H. C. in revision with full knowledge of the fact and deliberately keeps back one point, he will not be heard to make a second. If by some *bonafide* mistake a real point is omitted that may be an exception. 46 A. 146: 81 I. C. 100: 25 Cr. L. J. 612.

—once a criminal revision case has been dismissed for default of payment of printing charges, it is not competent to the H. C. to rehear the case or entertain a fresh application for revision. 44 M. L. J. 27: 69 I. C. 634: 23 Cr. L. J. 746.

—the H. C. has no power to review its judgment dismissing a criminal appeal even though fresh materials throwing doubt on the conviction are placed before it. The proper procedure is to make a reference to the L. Govt. under Ch. XXIX. 45 A. 143: 74 I. C. 270: 24 Cr. L. J. 766.

(8) Calling for record.

—the sec. does not give the H. C. a roving commission either in the direction of stamping with approval the proceedings of a

S. 435. (B) Calling for record—*contd.*

Lower Court or in the direction of questioning about and looking to see if possibly under a fair record there lies some trace of possible error. 1899 A. W. N. 135.

—the H. C. is competent to call for the record of any proceeding of an inferior court and revise the same, whether it is of a preliminary or final nature. 1892 A. W. N. 102; 14 A. L. J. 851

—the H. C. can call for and examine the record of any proceedings and interfere when a certain order though legal is improper. 1930 Nag 61; 26 N. L. R. 50; 121 I. C. 651; 31 Cr. L. J. 284; 1930 Cr. C. 149

—when records are called for, the inferior courts must forward the original records and not merely the copies thereof. Ratanlal 128.

—records may be called even after the prisoner has served out his sentence, 7 A. 135 and even after the death of the prisoner pending appeal. 2 B. 564.

—under the very extensive powers conferred by this sec the H. C. can call for and examine the proceedings of the inferior courts if the necessity of doing so is brought to its notice in any manner. But before it does so it would have to be satisfied that there are *a priori* grounds for apprehending a mis-carriage of justice. 45 A. 128; 20 A. L. J. 909; L. R. 3 A. 178 Cr.; 71 I. C. 243; 24 Cr. L. J. 115.

—s. 435 enables a S. J. to call for the record of proceedings under s. 110 Cr. P. C. taken before an inferior criminal court within his jurisdiction. Private and confidential inquiries should not influence judicial decisions. 1923 A. 596; 73 I. C. 337; 24 Cr. L. J. 593.

(9) Judicial proceeding or not.

—when a D. M. calls for a record under this sec. his proceeding is not a judicial proceeding within s. 476, 15 M. L. J. 489; 3 Cr. L. J. 118; 2 Weir 601, 31 M. 140; 17 M. L. J. 584; 3 M. L. T. 79; 7 Cr. L. J. 54

S. 436. (Power to order inquiry). It has been numbered 436 by the Amendment instead of 437.

Amendment.

By the new Amendment ss. 436 and 437 have been re-numbered ss. 437 and 436 respectively, and in the latter sec., as numbered, for the words "accused person" the words "person accused of an offence" have been substituted and after the words "discharged" the following have been added, namely "provided that no court shall make any direction under this sec. for inquiry into the case of any person who has been discharged unless such person has had an opportunity of showing cause why such direction should not be made." The words "instead of directing a fresh inquiry" in the next refers to this sec. and that has given rise to the cause of interchanging the numbers of the secs.

S. 436. Meaning of terms.

—"further inquiry" means that the case should be taken up again and that the question of dismissing the complaint, or charging the accused, should again be considered and an appropriate order made as the result of such fresh consideration. 82 M. 220 F. B.

"further inquiry" means an inquiry of the same nature as was previously held under s. 202 C. P. C. 9 Pat. L. T. 459 : 108 I. C. 329 : 29 Cr. L. J. 372.

—In regard to person accused who has never been before the court at all, it cannot be said that he has been "discharged" under this sec. 27 C. 658, 11 C. W. N. 218 (note), but see 29 C. 417, 32 C. 783.

—"discharged" in sec. 437 ought to be read as equivalent to discharged within the meaning of ss. 209, 253 and 259 and a discharge under s. 119 is not within the scope of this sec. 35 M. 83 : 6 M. L. T. 133 : 20 M. L. J. 137, it need not be an improper discharge. 9 A. 52, F. B., but see 394 P. L. R. 1902.

—"accused" means "a person accused of an offence" and not a person against whom proceedings under s. 110 are taken, 27 C. 662 : 33 C. 8 *contra.*, a person against whom an inquiry under s. 107 is instituted, is in the position of an accused. 36 C. 163, 21 A. 107, 16 B. 661, 23 C. 493, 24 A. 148. But see N. B. below.

—"examining the record under s. 435 or otherwise" does not mean, in any other way whatsoever, but in other way provided by the Code. 10 C. 263.

—the reasons for exercising the power conferred by this sec. are reasons which should arise upon the materials to be found on the record and not upon extraneous matter. 1890 A. W. N. 147.

—the provisions of s. 436 are not applicable to persons against whom proceedings are taken under Ch. VIII. 81 Ind. C. 970 : 2 Bur. L. J. 285.

—the new proviso does not apply to dismissal under s. 203 Cr. P. C. 23 A. L. J. 451.

—as the amended sec. contains the words "any person accused of an offence" instead of "any accused person" it does not include persons against whom proceedings were taken under ch. VIII. 2 Bur. L. J. 285.

Powers of respective courts.

—the powers of the H. C., the S. J. and the D. M. are co-extensive under this sec. 32 M. 220 F. B.

—though sec. 439 gives the H. C. all the powers of an Appellate Court under s. 423, the power under this sec. is not included in it. 9 A. 52.

—where the D. M. dismissed a complaint and no application was made to the S. J. the H. C. declined to interfere under this sec. 28 A. 268, 1924 A. W. N. 232.

—where in respect of a case in which the M. directed a preliminary inquiry, the S. J. directed a further inquiry the M. had no power to summon the accused at that stage. 84 I. C. 449 : 26 Cr. L. J. 305 : 1925 Cal. 576.

S. 436. Powers of respective courts—contd.

—further inquiry after discharge is improper unless the order of discharge is perverse or foolish or based on an incomplete record of evidence. Before ordering further enquiry the court must state in what respect the trial judge's conclusion is unsatisfactory. 26 Punj. L. R. 291.

—the H. C. has power, under sec. 439 read with sec. 423, to revise an order of discharge passed by the Pr. M. and to direct a further inquiry. 36 C. 994, 15 C. 608, 26 C. 746, 28 C. 652 667, 27 B. 84 7 C. W. N. 521) *Ref.* (27 C. 126, 6 C. L. J. 705, 33 C. 1282) *Discussed and Diss.*

—an order of discharge by the H. C. in its original criminal jurisdiction is no bar to fresh proceeding being taken before a competent M. 16 C. W. N. 983.

—the S. J. or the D. M. is not bound to refer the case to the H. C. in case of difference of opinion with the Lower Court on the mere appreciation of evidence but is justified in ordering reconsideration. 32 M. 220 F. B., 31 M. 133 *overruled*, 15 C. 608 *diss.*, 32 M. 214, Rat. Un. Cr. 213 290, 988, 1900 P. L. R. 33, 1 Bom. L. R. 222.

—a L. M. may order further inquiry by a subordinate M. in a case which he has himself discharged. 28 C. 102.

—the Bt. M. cannot revise the case of a person who had been called upon to give security and who was discharged under s. 119 Cr. P. C. 1928 All. 755 : 51 A. 408 : 27 A. L. J. 146 : 113 I. C. 79 : 30 Cr. L. J. 63.

—courts of concurrent jurisdiction cannot refer the case to the other, Rat. Un. Cr. 525, nor can pass orders of a contrary kind. 12 A. 434, 10 A. 146, 9 A. 362.

—when a D. M. has refused to interfere under this sec. his successor cannot direct further inquiry. 4 C. W. N. 100.

—the S. J. or the D. M. cannot direct the S. J. or the D. M.

for the purpose
F. B., 10 B. 131,

38 P. R. 1885

—it is discretionary with the D. M. to select the subordinate M. for further inquiry. 10 C. 207, but this discretion must be properly exercised, 15 C. 608, 4 A. 143, and ordinarily the same should be selected, 8 M. 296, 336, but the unsatisfactory way to which a subordinate M. has dealt with the case would be a good ground for ordering further inquiry by another M., 32 M. 220 F. B., but in case the inquiry should commence *de novo*, 6 A. 617, 23 C. 573, 4 L. B. R. 233

—the Sub-divisional M. cannot withdraw a case especially referred to a subordinate M. by the D. M. Rat. Un. Cr. 315, but he is competent to transfer a case under s. 192 in which he has been directed to make further inquiry. 2 Weir 563.

—this is the only sec. authorising the M. to re-open the proceedings in which a person has been released. 6 C. W. N. 163.

S. 436. When further inquiry should be ordered—contd.

—the only fact that the prosecution did not choose to produce evidence as to identification of thumb-marks is in itself no ground for ordering further inquiry. 104 I. C. 636: 28 Cr. L. J. 860: 25 Punj L. R. 593

—merely because the Dt. M. does not agree with the opinion of the trying M. there is no reason to direct a further inquiry. 44 A. 691: 1922 A. 429: 71 I. C. 600: 21 A. L. J. 194: 1923 A. 484: 24 Cr. L. J. 184.

—it is competent to Dt. M. to order further inquiry if in his opinion, the evidence on record has not been properly appreciated. 4 Lah. 411: 1922 Lah. 59, (17 P. R. 1895, 10 B. 131, 15 C. 608, 11 M. 334) *Ref.*

—but the Dt. M. has no power to interfere with the order of discharge which is based on a careful appreciation of the evidence on record. 1930 Nag. 108: 122 I. C. 434: 31 Cr. L. J. 47: 1930 Cr. C. 316, 8 A. L. J. 45 *Ref.*

—even misappreciation of evidence by the trying M. will not justify the Dt. M. to set aside the order of discharge which can be done only if there is illegality or irregularity in the proceeding. 1930 Nag. 108: 31 Cr. L. J. 417: 122 I. C. 434: 1930 Cr. C. 316, (31 M. 133, 18 A. L. J. 1135, 1926 Nag. 117) *Relon.*

—the S. J. can order further inquiry on the same facts as have been considered by the original Court where the latter was very much influenced by the fact that a civil suit was pending and he regarded the complaint as a sort of forestalling the civil suit. 86 I. C. 224: 1925 All. 298: 26 Cr. L. J. 736: 23 A. L. J. 20.

—but further inquiry cannot be ordered on the bare possibility of an offence being disclosed on further evidence being taken. 43 M. L. J. 564: 31 M. L. J. 854: 61 I. C. 624: 23 Cr. L. J. 592: 1923 Mad. 59

—where the S. J. without reasons ordered further inquiry in the interests of justice, the order was entirely inadequate. 1922 Lsh. 409.

—an order directing further inquiry under s. 437 Cr. P. C. without regard to what is really the material consideration in such case *viz.*, the prospect of any public advantage from the case being tried, is bad. 43 M. L. J. 555: 23 Cr. L. J. 592: 1923 Mad. 59

I is then examined as a prosecution witness against co-accused it is improper to direct fresh inquiry on the basis of the evidence given by him as witness. 1925 Cal. 104.

—mere lapse of time is not a sufficient ground for refusal to order further inquiry if the court finds that an offence has been committed which should be inquired into. 69 I. C. 633: 1923 Nag. 100: 23 Cr. L. J. 745.

—a S. J. can under s. 437 direct further inquiry in a case where the accused has been discharged under s. 253, but where no

S. 436. When further inquiry should be ordered—contd.

fresh evidence is likely to be produced the court should hesitate before exercising such powers unless there are many palpable errors in the decision. 38 C. L. J. 206

—a S. J. or D. M. has jurisdiction under this sec to order further inquiry in cases of discharge under s. 259. 15 C. 608, 9 A. 52 F. B., 10 B. 131, 14 M. 331 F. B., 3 L. B. R. 97 F. B., 1 L. B. R. 100 overruled, 2 L. B. R. 27, 2 P. R. Cr. 1901, *Contra*, 12 C. 522, 8 M. 336, 1887 P. R. Cr. 63, 8 P. R. Cr. 1900.

—an order of discharge passed on withdrawal of the case by the Public Prosecutor does not amount to an acquittal so as to prevent the Dt. M. from acting under s. 436 Cr. P. C. There is no difference between a discharge on a consideration of evidence and a discharge at the instance of the Public Prosecutor under s. 494. 1929 Lah. 315 : 30 Punj. L. R. 58 : 114 I. C. 50 : 30 Cr. L. J. 233.

—the accused may be tried for any offence established on further inquiry. 7 M. 454, 1 C. L. R. 83, 2 P. R. Cr. 1901

—where a complaint has been summarily dismissed without notice to the party complained against, that is no discharge within the meaning of sec. 436 and further inquiry can be ordered without notice to him. 23 A. L. J. 451.

—where after a full trial the accused were discharged, the discharge was for all practical purposes as good as an acquittal, it is not open to the Dt. M. to order a further inquiry. 4 Lah. L. J. 331.

Procedure after further inquiry is ordered.

—a subdivisional M. who had dismissed the complaint being subsequently directed to hold further inquiry cannot at once summon the accused without holding an inquiry and exercising his judgment under s. 203 Cr. P. C., 109 I. C. 508 : 29 Cr. L. J. 572 : 10 A. I. Cr. R. 326, but omission to give effect to the order is an irregularity curable under s. 537 Cr. P. C. if no failure of justice is caused by not holding an inquiry. 120 I. C. 632 : 31 Cr. L. J. 146 : 1929 Pat. 469 : 8 Pat. 537 : 10 Pat. L. T. 725 : 1929 Cr. C. 353, 1929 Pat. 644 : 1929 Cr. C. 372, (32 M. 220 F. B., 4 Pat. L. J. 456 and 5 P. L. J. 47 *Dist* 1928 Pat. 12 *Diss from*

—"further inquiry" is not restricted to s. 202 and need not be of formal character. The M. directed to make further inquiry may issue process to the accused person and take evidence before discharging or not discharging the accused. 1929 Pat. 644 : 1929 Cr. C. 372, 15 C. 608 F. B. *fol*.

Procedure,—if notice is necessary.

—under the amended sec. 436 Cr. P. C. there is clear distinction between a case in which a complaint is dismissed under s. 203 and a case in which the accused is discharged under s. 253 Cr. P. C. In the latter case only notice should be given to the accused before any order is passed in revision because he was present at the trial but in the former case no notice is required to be given as the accused has no right to appear at that stage. 49 C. L. J. 422 : 1929 Cal. 508 : 119 I. C. 376 : 30 Cr. L. J. 1030.

S. 436. Procedure—If notice is necessary—contd.

—when a complaint is dismissed under s. 203 Cr. P. C. no notice to the person complained against need be given before further inquiry is ordered. 102 I. C. 511. 1927 Bom. 436: 28 Cr. L. J. 575: 29 Bom. L. R. 575, nor in such case an opportunity is to be given to the accused to show cause why orders should not be passed against him under s. 436. The provision to s. 436 applies only to cases where the accused person has been discharged and not to cases where orders have been passed under s. 203 Cr. P. C. 103 I. C. 106: 1927 Oudh 264: 28 Cr. L. J. 650, 1925 All. 537. 47 A. 722: 86 I. C. 600: 26 Cr. L. J. 1176.

—dismissal of the complaint under s. 203 Cr. P. C. does not amount to a discharge of the accused, so an order under s. 436 Cr. P. C. for further inquiry into a complaint dismissed under s. 203 is not bad for want of notice. 49 M. 918: 99 I. C. 337: 1927 Mad. 19: 28 Cr. L. J. 129.

—but where the S. J. without giving notice to the accused, directed a further inquiry in a case where the accused had been discharged the order was bad. 65 I. C. 421: 23 Cr. L. J. 70: 20 A. L. J. 91, 4 Lah. 411, 71 I. C. 360: 24 Cr. L. J. 136.

S. 437. (Power to order commitment). It has been numbered 437 by the Amendment, instead of 436.

Application of the section.

—to apply this sec. the accused must be charged with an offence exclusively triable by the court of Sessions. 1929 M. W. N. 709, 1904 P. L. R. 234, 7 A. 853, 12 C. 473, 9 B. 100, 8 M. 18, 1 A. 413 F. B., 15 M. L. J. 373, Rat. Un Cr. 42, and the accused must be discharged and not acquitted, 20 C. 633, 23 M. 225 but to oust jurisdiction the acquittal must be one in substance and not merely in form. 8 W. R. Cr. 41, 24 M. 136.

—this sec. does not apply merely because in the opinion of the D. M. the offence could not be adequately punished by the M. 1908 A. W. N. 189: 8 Cr. L. J. 47, 2 Weir 260, 31 M. 133.

—the words "or otherwise" in the sec. do not mean 'in any way whatsoever' but 'in any other way provided by the Code.' 10 C. 268.

—the ground for exercising the powers under this section must arise upon the materials to be found on the record and not upon any extraneous matter. 1890 A. W. N. 147, 15 C. 608.

—the provisions of this sec. do not apply to Presidency M. who can revise a complaint even after discharge. 1 C. W. N. 49, 5 C. W. N. 169, 28 C. 211, 652, 29 C. 726, but the H. C. can interfere with the orders of Pr. M. 36 C. 994, 3 C. W. N. 593, 601.

"Exclusively triable by Court of Sessions."

to be excluded from the S. J. as the accused must
Court
L. 168.
ed is
S. J.

S. 437. "Exclusively triable by Court of Sessions"—*contd.*

cannot direct commitment or order fresh inquiry. *Rataelal* 42, 20 C 633, 1 A. 415, 42 M. 561, 3 B. L. R. 65, 1882 A. W. N. 105, 15 M. L. J. 575.

—the S. J. can under this section commit an accused for trial to the Sessions Court if he is of opinion that the case is triable exclusively by the Court of Sessions, or it is intimately connected with a charge exclusively triable by such Court and forms part of the same transaction. 55 C. 645; 97 L. C. 659; 1926 Cal. 1090 27 Cr. L. J. 1139

"An accused person has been improperly discharged."

—the S. J. or the Dt. M. before ordering committal of the accused to the Sessions must come to a finding, with reference to the evidence, that the accused has been improperly discharged. 1 P. L. J. 97.

—the S. J. may direct commitment even where the Dt. M. himself discharges the accused 7 A 853

—the S. J. must consider all the grounds of discharge including evidence before ordering commitment of the accused person for further inquiry. 7 C. W. N. 77 He can direct committal though no express order of discharge has been recorded by the M 10 L. W. 521, 43 M 330

Power of respective Courts.

—under s. 436 the S. J. and the D. M. have co-ordinate powers to commit to Sessions. 28 C. 397, 5 C. W. N. 574, 10 B. 319, Rat. Un. Cr 837.

—the S. J. has jurisdiction to commit an accused for retrial in the Sessions Court if he is of opinion that the case is exclusively triable by the Sessions Court. 53 L. C. 645 97 L. C. 659 1926 Cal. 1090 : 27 Cr. L. J. 1139.

—a subordinate M. of the First Class, invested with powers under s. 30 is inferior to the Dt. M. and the latter can revise an improper order of discharge passed by the former. 12 N. L. R 94.

What is discharge.

—refusal to proceed amounts to discharge. 4 C. W. N. 242, 32 C. 783; 9 C. W. N. 810

—an acquittal under a charge framed does not imply that the M. discharged him in respect of any other charge which might have been framed. 22 C. W. N. 117; 18 Cr. L. J 834

When and how commitment should be ordered.

—the S. J. and the Dt. M. should use the powers given to them by this sec. sparingly and with great caution and circumspection specially when the question involved is a question of fact only. 102 L. C. 777; 28 Cr. L. J. 601 25 A. L. J. 703.

—a superior Court should hesitate to exercise its power of ordering further inquiry, unless there are palpable errors in the decision of the lower court. 50 C. L. J. 284. 1929 Cr. C. 467; 1929 Cal. 755.

S. 437. When and how commitment should be ordered—*contd.*

—where the inferior court has considered the whole of the prosecution evidence and there is no defect of procedure and the M. discharges the accused because in his opinion the evidence is insufficient or incredible but the Dt. M. comes to a different conclusion upon the evidence, his proper course is to make an order of commitment and not of further inquiry. 12 N. L. R. 94.

—so also where the S. J. or the Dt. M. is satisfied that on the evidence there is a clear case for commitment and no reason for desiring a further consideration by the M. he should commit under this section without ordering a further inquiry. 15 C. 608.

—but the Dt. M. is not restricted to ordering commitment of the accused who may have been discharged by a subordinate M.; he can also direct a further enquiry prior to making an order for commitment, 18 C. 25, but further enquiry should not be ordered unless the order of discharge was perverse or foolish or incomplete. 95 I. C. 307; 27 Cr. L. J. 771; 27 Punj. L. R. 488, 94 I. C. 133; 27 Cr. L. J. 565; 27 Punj. L. R. 397, 96 I. C. 869; 27 Cr. L. J. 1013.

—speaking generally further inquiry after discharge is improper unless the discharge order is manifestly perverse or foolish or was based upon an incomplete record of evidence. 9 Lab. L. J. 503; 29 Cr. L. J. 39; 1928 Lab. 97; 106 I. C. 455.

—before directing commitment the case must be fully considered on merits as disclosed by the evidence taken before the M. 7 C. W. N. 77, 13 B. 376.

—when the M. passed an order of discharge under s. 209 Cr. P. C. and the Sessions Judge at first refused to set aside that order but at a later stage after perusing the entire evidence directed that the order was such order
Cr. L. J.

200. 121 I. C. 401; 1930 Cr. V. 13.

—the mere fact that a different view could be taken on the evidence would not justify the S. J. ordering commitment. 26 Cr. L. J. 886; 1925 Pat. 599; 88 I. C. 822, 102 I. C. 777; 28 Cr. L. J. 601; 25 A. L. J. 703; 49 A. 879; 1927 All. 804.

—an order of discharge should not be lightly interfered with. 89 I. C. 272; 1925 Lab. 395; 26 Cr. L. J. 1328.

—the trial M. for dis-
sufficient ground for
5; 27 Punj. L. R. 397.

—the S. J. or the Dt. M. may directly commit the accused under this sec. without the intervention of the discharging M. 10 B. 319, 28 C. 397, 31 M. 40, 10 B. 319.

—where the M. holding a preliminary inquiry comes to the conclusion that the prosecution witnesses were untrustworthy and dismiss the complaint and the Dt. M. relying upon a civil court judgment which held a document to be suspicious, set aside the

S. 437. When and how commitment should be ordered—
contd.

order of discharge and committed the accused to the Sessions, the Dt. M. acted wrongly. 28 C. W. N. 587 : 51 C. 849 : 83 I. C. 677.

—the order of commitment must specify the particular act constituting the offence charged. 10 B. L. R. 285. 19 W. R. Cr. 30, 21 W. R. Cr. 41, 10 Cr. L. J. 554 :

—the M. is competent to examine the credibility of witnesses examined. He should not commit if prosecution case is improbable and evidence unreliable. 12 C. W. N. 117 : 6 C. L. J. 760.

—conviction or acquittal for minor offence does not bar commitment for major offence. 15 C. 608, 24 A. 136.

Notice to the accused.

—notice and special opportunity to show cause must be given to the accused. Rst Un. Cr. 588. 24 W. R. Cr. 70, 22 W. R. Cr. 67, 6 M. 372. 1 B. 64, 15 M. L. J. 373, 1 C. L. R. 93, but where no objection is taken on the ground of want of notice and no failure of justice has occasioned the H. C. will not interfere. 7 C. 662.

—where some of the accused were not made respondents to the revision petition and no notice had been ordered to be served upon them and where they had no opportunity of showing cause the order of Dt. M. must be set aside so far as they were concerned. 48 M. 874 : 90 I. C. 530 : 26 Cr. J. 1570 : 1925 Mad 1061.

—want of notice vitiates the order. 77 I. C. 987 : 25 Cr. L. J. 523.

Interference by the High Court.

—the H. C. can revise an order of commitment on points of fact as well as on questions of law. 81 I. C. 913. 25 Cr. L. J. 1089 : 30 M. 224, 12 C. W. N. 117, 1 P. L. T. 153.

—the H. C. can interfere in revision with a wrong interference even of fact, from proved facts. 81 I. C. 897 : 1925 Nag. 123 : 25 Cr. L. J. 1073.

—the H. C. can interfere in revision under s. 439 Cr. P. C. with the order of commitment, 12 C. W. N. 117, 27 M. 54, when the order of commitment is made on insufficient or unreliable evidence, 7 C. W. N. 327 or where there is no *prima facie* case for commitment. 9 C. W. N. 929.

—but the H. C. will not interfere except upon strong ground and under exceptional circumstances. 26 A. 564, 13 A. L. J. 111, 30 M. 224.

—no order of the S. J. in the exercise of revisional jurisdiction under this sec cannot be the subject matter of a reference to the H. C. by the M. when order of discharge has been interfered with. 49 A. 443. 100 I. C. 361. 1927 All. 279. 28 Cr. L. J. 281.

S. 438. (Report to H. C.)

N. B. By the Amendment the words "by or under any general or special order of the Sessions Judge" have been submitted in place of the words "by the Session Judge."

S. 438. (Report to H. C.)—*contd.*

—the D. M. has no power to criticise or refer to the H. C. the proceedings of the S. J. 93 I. C. 158 : 27 Cr. L. J. 430 : 26 Punj. L. R. 801, 12 M. L. T. 170 : 16 Ind. C. 522 : 13 Cr. L. J. 714 : 23 M. L. J. 732, 2 Weir 565, 566, 5 Lah. 11 : 81 I. C. 544, 6 L. L. J. 50, 38 M. 1028, 39 M. 505, 40 I. C. 316, 43 I. C. 433, 6 C. L. R. 245, 18 C. 186, 36 A. 378 : 12 A. L. J. 519 : 15 Cr. L. J. 407 : 23 Ind. C. 1007, 8 C. 875, 15 W. R. Cr. 25, 98 I. C. 101 : 27 Cr. L. J. 1253 : 1927 Sind 45, if he considers that there has been a miscarriage of justice he should invite the Public Prosecutor or the Local Government through the former to move the H. C. 9 A. 362, 10 A. 146, 25 A. 128, 24 A. 346, 28 A. 91 : 2 Cr. L. J. 515 : 6 Bom. L. R. 1099, 15 M. 36 *contra*. 12 A. 434

—the D. M. cannot himself set aside the decision of the lower court under s. 145 Cr. P. C. he is to refer the case to the H. C. 83 I. C. 526 : 1925 Cal. 1234 : 26 Cr. L. J. 1166.

—reference by the S. J. asking the H. C. to confirm a part of an order passed under s. 145 Cr. P. C. and to quash the rest is not legal. 41 C. L. J. 593 : 1927 Cal. 261 : 28 Cr. L. J. 210 : 99 I. C. 1010.

—the S. J. may refer the proceeding of the D. M. to the H. C. under the sec. 22 C. 573, 3 Lah. 23 : 68 I. C. 609, 23 Cr. L. J. 577.

—notwithstanding the restrictions provided by s. 435, sub-sec. (3), the S. J. or D. M. may, to save expense of the parties, report to the H. C. 5 C. W. N. 71, but it has also been held that the aggrieved party should himself move the H. C. 5 C. W. N. 86 (note).

—the reference can be made under this sec. against the order
 N. 89 15 A. 36, 25 A. 128 : 81 I. C. 869, A. W. N. 1902, 200, 13 P. W. R. 55, 12 P. R. Cr. 1906 : 5 N. L. R. 4 : 15 Cr. L. J. 236 : 23 Ind. C. 188, 12 A. L. J. 255 : 23 Ind. C. 512 : 15 Cr. L. J. 304, or against the order of conviction. Rat. Un. Cr. 407, 2 Weir 564.

—D. M. is not competent to refer to the H. C. under this sec. a point of law actually arising in a case pending before him. 15 Cr. L. J. 472 : 24 Ind. C. 352.

—reference should be made only for some reason specified in the sec. 1891 A. W. N. 80. It is discretionary with the S. J. or the D. M. to make reference. 20 W. R. Cr. 49. He should not refer on the representation of the complainant or District Superintendent of Police. Rat. Un. Cr. 340, Cr. Rule 31 of 1887.

—when a subordinate M. finds that he has passed an illegal sentence his proper course is to submit the record to the D. M. for action under this sec. 2 L. B. R. 43, 14 Bur. L. R. 81 : 7 Cr. L. J. 479 : 4 L. B. R. 213.

—the recommendation should contain a definite recommendation that the sentence be altered or reversed. 27 A. 25

—the power conferred by s. 438 is confined to proceedings of any inferior criminal court. 5 Lah. 11 : 81 I. C. 544, (23 C. 249, 11 B. 796.) *fol.*

S. 439. (Report to H. C.)—contd.

—ordinarily the H. C. would not entertain a reference under this sec. the object of which is to have an order of acquittal passed by an inferior court set aside. 5 Lab. 16; 81 I. C. 547; 25 Cr. L. J. 931, (24 A. 346, 25 A. 128, 68 I. C. 615, 62 I. C. 869) *Ref.* but the Patna H. C. has held that where the Session Judge refers an acquittal to the H. C. recommending that it may be set aside, the H. C. may rightly interfere with such acquittal. 7 Pat. 579; 116 I. C. 768; 30 Cr. L. J. 673 1929 Pat. 133. While the Calcutta H. C. has held that a reference of acquittal to the H. C. is not binding on the H. C. and that it may set aside an acquittal and order a retrial, it has also held that it may not interfere with such an acquittal. 116 I. C. 164; 30 Cr. L. J. 579 1929 Cal. 169.

—the H. C. will have to investigate the whole of the facts before it comes to the conclusion whether it ought to interfere in revision and cannot rely on the opinion of the Dt. M. referring the case. 44 C 703

—the H. C. will not interfere in revision merely because the evidence before the lower court has not been according to the referring officer, properly appreciated 99 I. C 913; 1927 Mad 434; 28 Cr. L. J. 207.

—a court should not lightly set aside in revision an order of dismissal of complaint unless there has been a clear miscarriage of justice. 86 I. C. 802; 26 Cr. L. J. 866; 1925 Pat. 447.

—ordinarily an applicant ought to go to the Sessions Judge and move him for a reference to the High Court. 50 C. 423 1923 Cal 674.

in prescribed
of the refer-
1033: 1926

—the duty of a H C when a case comes up for enhancement of sentence is to see whether there is matter on the record of the case showing that the sentence passed is clearly inadequate to the offence. 86 I. C. 469 26 Cr. L. J. 821; 1925 Nag. 321.

—where the trial J. sentenced the accused to six months' rigorous imprisonment under s. 457 I. P. C. without giving due consideration to the previous conviction but the last conviction was prior to two years and a half, the sentence need not be enhanced. 27 A. L. J. 397; 1929 All. 270; 115 I. C. 868; 30 Cr. L. J. 529, 1929 All. 267 *Dhat*.

—where the prosecution was negligent in bringing materials to the notice of the Court justifying enhanced sentence, the H. C. will not enhance the sentence in reference. 115 L.C. 614; 1929 All. 267; 30 Cr. L. J. 505

—a reference can be made to H. C. under s. 438 only in respect of an error on a point of law. 85 1 C 939; 26 Cr. L. J. 651, 1925 Cal. 1068.

S. 438. (Report to H. C.)—*contd.*

—the H. C. will refuse to go into the merits of the case unless there has been a material reference.

which the reference is made made by either party then accepted by the H. C. for the 30 C. W. N. 359 : 91 I. C.

—where a revision petition by an accused against his conviction has been dismissed by the H. C. without notice to the Public Prosecutor it does not hear a reference by the Dt. M. recommending enhancement of the sentence. 85 I. C. 727 : 26 Cr. L. J. 583 : 1915 Mad. 993

—a representation made by the Police to the Dt. M. in the form of an official letter should not be taken into consideration by H. C. as the ground for setting aside an order by a Criminal Court. 105 I. C. 658 : 1927 All. 727 : 28 Cr. L. J. 916 : 26 A. L. J. 76

—the Dt. M. should before making the reference, examine the notes of the Prosecuting Inspector for himself and if there is any material portion which he thinks of value he may embody that in his own order. It is improper to accept en bloc the prosecuting Inspector's criticism and simply attaches them to his letter 51 A. 663 : 1929 All. 273 : 116 I. C. 25 : 30 Cr. L. J. 562 : 27 A. L. J. 361.

—where the Dt. M. made a reference to the H. C. to set aside a conviction and to order a retrial on the ground that the accused subsequent to conviction at with proper not, it would be improper under similar circumstances to set aside the conviction at the instance of the Crown 85 I. C. 912 : 1925 All. 292 : 26 Cr. L. J. 654.

—a S. J. refusing to make reference on a former occasion may subsequently on the ground of some new facts coming to his knowledge, refer the same. 104 I. C. 912 : 1927 Bom. 360 : 28 Cr. L. J. 896 : 29 Bom. L. R. 480 : 9 A. I. Cr. 27

S. 439 (High Court's powers of revision)

N. B.—By the Amendment "s 105" has been omitted from sub-sec. (1), and in showing cause under sub-sec. (2) the convicted person is entitled also to show cause against his conviction.

Effect of amendment.

—the amendment to s. 439 by the introduction of cl. 6 is intended to give a person who has been brought to the bar of the H. C. to show cause against enhancement of sentence, the right of showing by argument. *a fortiori* not only that the sentence should

S. 439. Effect of amendment—*contd.*

not be enhanced but that conviction should be set aside, 86 I. C. 469; 26 Cr. L. J. 821.

When the H. C. will interfere and when not, grounds of interference

—where the law provides both general and special revisional jurisdiction the special jurisdiction should be exhausted before the general jurisdiction is resorted to. 32 M. 220 F. B.

—ordinarily where the accused has right of appeal but has not exercised the same, the H. C. will not permit him to apply in revision. 20 L. W. 914; 1925 M. 239, 44 M. L. J. 366; 1923 Mad. 484; 17 L. W. 357.

—where the law provides a direct remedy, the H. C. will not interfere in revision, 1905 A. W. N. 143; 2 Cr. L. J. 335.

—the powers of the H. C. acting in its revisional jurisdiction is not confined to those conferred upon the court as a court of appeal. The H. C. has power to quash or set aside proceedings pending before the lower court and it can exercise that power at any stage of the proceeding though such power should be exercised in exceptional cases only. 35 M. L. T. 77; 47 M. 722 81 I. C. 745; 25 Cr. L. J. 1009, (22 C. 131, 26 C. 786, 39 M. 561, 38 C. 68, 67 I. C. 589, 25 C. 233, 14 A. L. J. 851) *Ref.*

—the H. C. is extremely reluctant in quashing proceedings *in limine* except in a proper case 86 I. C. 1005; 26 Cr. L. J. 941.

—the H. C. does not interfere in a case pending before a subordinate court unless it is of an exceptional nature. 1930 Lah 881.

—the H. C. will not interfere under this sec. where there is a Lower Court having concurrent revisional jurisdiction unless a
 by such court
 N. 238, 1905 A.
 All. 272, 119 I. C.

... is necessary
 1927 All. 834;

—this sec. entrusts the H. C. with the responsibility of a wide and unfettered discretion. 28 B. 533, 5 N. L. R. 4; 9 Cr. L. J. 211, 2 S. L. R. 25-10 Cr. L. J. 237, 11 P. R. 1908; 8 Cr. L. J. 250.

—the H. C. will not interfere in revision unless prejudice is shown to have been caused or unless the interests of justice demand. 5 P. R. C. 1906; 4 Cr. L. J. 75, 4 L. B. R. 315 9 Cr. L. J. 15 F. B., 11 Bom. L. R. 858; 10 Cr. L. J. 433, 4 Bom. L. R. 686 30 M. 224, 7 C. W. N. 327, 14 M. 338, 15 C. 621, 105 I. C. 802 28 Cr. L. J. 978, 1930 M. W. N. 770.

—the H. C. will not interfere where the Lower Courts have passed judgment on careful and deliberate consideration of the evidence, 20 W. R. Cr. 61; 12 B. L. R. 249, 24 A. 346, 8 C. 895, 6 A. 484, 18 P. W. R. 1909; 11 Cr. L. J. 110, 8 P. R. Cr. 1900, 8 P. R. 1909; 10 Cr. L. J. 314, 30 M. 224 7 C. W. N. 327, 15 C. 621, 14 M. 338 and both the lower courts have concurred in a finding of facts

S. 439. When the H. C. will interfere and when not, grounds of interference—*contd.*

and there is nothing illegal or erroneous in the procedure of the M. 84 I. C. 937 : 26 Cr. L. J. 393 : 1925 Lah. 42.

—it is only in very exceptional circumstances that the H. C. will interfere in revision with the action of any subordinate court in respect of any pending case. 26 C. 786 : 3 C. W. N. 491, 1899 A. W. N. 212, 25 C. 233, 1 P. W. R. 1909 : 9 Cr. L. J. 151, 3 P. W. R. 1909 : 9 Cr. L. J. 154, 14 C. W. N. 167 (note), 6 N. L. J. 119 : 73 I. C. 335, 38 C. 68 or part-heard trial. 105 I. C. 803 : 1927 Mad. 975 : 1937 M. W. N. 752 : 39 M. L. J. 452, *see other cases under the heading "Can interfere with the proceedings of the Subordinate Court" below*

—where the facts found by the M. on which he convicts the accused would also constitute a more serious offence the H. C. will not ordinarily interfere unless the sentence appears to be inadequate or the accused has been deprived of the right of appeal. 90 I. C. 439 : 26 Cr. L. J. 1559, or the views of the trial court is clearly wrong. 1928 Lah. 546 : 9 Lah. 12 : 108 I. C. 265 : 29 Cr. L. J. 365.

—but the H. C. has revisional powers when the lower court has assumed jurisdiction by ignoring aggravated facts. 1925 Mad. 367, *contra.*, 54 M. L. J. 456 : 109 I. C. 907 : 29 Cr. L. J. 635 : 1928 Mad. 585

—application for enhancement of sentence should be made when possible before the accused has served his sentence. 1928 Pat. 201 : 107 I. C. 536 : 29 Cr. L. J. 261 : 9 A. I. R. Cr. 523.

—unless the order passed by the M. under s. 562 is mistaken or injudicious or amounts to a failure of justice, the H. C. will not interfere in revision. 85 I. C. 848 : 26 Cr. L. J. 624.

• —no revision lies against the attachment of accused's property to recover fine, 28 P. L. R. 1915 : 16 Cr. L. J. 166 : 27 Ind. C. 550.

—the H. C. will not interfere with the executive and administrative matter, 19 M. L. J. 566 : 11 Cr. L. J. 69, 17 C. W. N. 1245 or matters under special enactments. 39 M. 1085, 41 C. 465 F. B

—when a criminal case is referred to the H. C. by the Sessions Judge and one Bench of the H. C. without finally disposing of it returns the reference in the other connected cases to the Sessions Judge and asks him to deal with them in the light of their judgments another Bench of the H. C. constituted by the Chief Justice has jurisdiction to proceed with the trial of the case not already disposed of. 51 M. 122 : 27 L. W. 239 : 28 Cr. L. J. 974 : 53 M. L. J. 633 : 1927 M. W. N. 835 : 105 I. C. 636 Sp. B.

—where the lower appellate court refused to allow parties to be heard in revision, the H. C. will interfere in revision. *but this sec. does not apply to revision of an offence*
20 C. W. N. 1071 :
11 Cr. L. J. 203

S 439. When the H. C. will interfere and when not, grounds of interference—*contd*

—the word “correctness” in the sec does not mean that the court may enquire whether the finding was acceptable to it on balance of the evidence. 27 A. L. J. 775; 1929 All. 597, 1929 Cr. C. 176; 117 I. C. 346; 30 Cr. L. J. 756

—as a general rule it is expedient not to interfere, on revision, with an order of acquittal at the instance of a private person unless it is demanded in the interest of public justice. 42 C. 612, 19 C. W. N. 144, 41 B. 560, 21 C. W. N. 250; 44 C. 703.

—the H. C. will interfere in revision against acquittal only where it is urgently demanded in the interests of public justice. 43 M. L. J. 369, 1922 M. W. N. 579; 31 M. L. T. 342, 68 I. C. 615; 23 Cr. L. J. 583 F. B., 42 C. 612 *fol* 82 I. C. 274; 1925 Pat. 165, 25 Cr. L. J. 1266, 20 L. W. 327; 1924 M. 837, 39 M. 505, 69 I. C. 379, 33 C. W. N. 576, 119 I. C. 133, 30 Cr. L. J. 1013; 1929 Cal. 639, *see other cases on the point under the heading “Revision of orders of acquittal”*

—where the S. J. has exercised his judicial discretion in refusing permission to withdraw a case, the H. C. will be very reluctant to interfere. 92 I. C. 750; 1926 Mad. 296; 27 Cr. L. J. 334.

—the H. C. will not ordinarily interfere with an order of the lower court under s. 528 Cr. P. C. 108 I. C. 329, 1928 Pat. 347; 29 Cr. L. J. 373.

—where a discretion has been exercised by a court of competent jurisdiction which is not on the face of it arbitrary, the H. C. in revision will not interfere. 2 Pat. 708.

—if a M. relies wrongly on a piece of evidence, this is no error or want of jurisdiction warranting an interference in revision by the H. C. 1 Pat. 75; 3 Pat. L. T. 17, 65 I. C. 616; 23 Cr. L. J. 152.

—the H. C. interfered where defective investigation constituted material error, 2 Weir 570, where the judgment was manifestly defective and findings were insufficient to sustain the conviction, 2 C. L. J. 516, where the fact of the witnesses being accomplices were not considered and hearsay evidence was improperly admitted on important points, 2 C. W. N. 672, where there was omission by the Appellate Court to consider the contradictory previous statements of witness, 2 Weir 573, where a large amount of attention had been directed by the Lower Court to the evidence of the witness, 361, 15 W. R. Cr. 86, 2 W. R. Cr. L. R. 686, 12 P. R. Cr. 1905, where appeal without examining the independent judgment to bear on Cr. L. J. 137, 14 C. W. N. 23 (note), 13 C. W. N. 192 (note), 24 A. 254, 10 C. W. N. 446, where the conviction was based on discrepant evidence of which no notice appeared to have been taken by both the Lower Courts, 8 P. W. R. 1912, 113 P. L. R. 1912, 15 Ind. C. 95, 13 Cr. L. J. 463, where the complainant was an enemy of the accused and other circumstances made the case doubtful, 28 P. W. R. 1914; 168 P. L. R. 1914; 15 Cr. L. J. 591, 25 Ind. C. 343.

S. 439. When the H. C. will interfere and when not, grounds of interference—contd.

—where the complaint disclosed no offence and the charge framed was not sustainable the H. C. could quash the charge. 9 Lab. L. J. 351: 1927 Lab. 825: 106 I. C. 224: 28 Cr. L. J. 1040.

—under the amendment, the H. C. can interfere with the order under ss. 145 and 147 Cr. P. C. not only on the question of jurisdiction but also on the question of legality. 6 Pat. L. T. 799: 27 Cr. L. J. 142: 91 I. C. 814: 1926 Pat. 196, 22 L. W. 831.

—the H. C. will not lightly interfere with the order of the Dt. M. for the management of the attached properties under s. 146 Cr. P. C. 104 I. C. 104: 1927 Pat. 393: 28 Cr. L. J. 776: 9 Pat. L. T. 109: 7 Pat. 1.

—where no question of European British subject is involved the Madras H. C. has no power of revision over a sentence by the S. J. of Bangalore, the proper tribunal being the Resident's court 45 M. L. J. 800: 18 L. W. 895.

—where a *parda* lady is compelled by the M. to appear before him on the ground that other ladies belonging to the same class had appeared in court out of their own free will, the H. C. will interfere in revision. 99 I. C. 126: 1927 All. 149: 28 Cr. L. J. 94.

—when the M. has not given a reasonable opportunity to the accused's pleader to present his case the H. C. may interfere in revision. 101 I. C. 595: 1927 Bom. 361: 29 Bom. L. R. 488.

—the H. C. will not hear in revision the party who is in contempt of court. 1928 Cal. 241.

—where a reference by a Sessions Judge was dismissed without hearing the counsel no revision lies on the same grounds. 192 All. 724: 25 A. L. J. 1010: 106 I. C. 680: 28 Cr. L. J. 88.

—the H. C. cannot pass an order under sub-sec. 2 of s. 80 the Reformatory Schools Act not only on appeal but also in revision. 1928 Bom. 348: 30 Bom. L. R. 952.

—for expunging objectionable remarks in the judgment of the lower court the procedure to be adopted is to file an appeal and not to prefer a revision. 1930 M. W. N. 791, 44 A. 401 *Relon*.

—the object of requiring application to be made first to the District authorities before moving the H. C. is that in dealing with the matter the H. C. may have before it the reasoned opinions of two courts on the point at view and this object is frustrated if parties are allowed to take points which they did not press in the court below. 45 A. 526: 73 I. C. 801: 24 Cr. L. J. 689.

How and when the revisional powers of the H. C. can be invoked.

—the H. C. may act upon information in whatever way received. 24 W. R. Cr. 60, 1 A. 139, 2 A. 448, 24 A. 346, 2 M. 38, 2 S. L. R. 25: 10 Cr. L. J. 237, but it is right practice that the Judges should be moved in open court. 2 B. 564, 16 B. 580, Ratanlal 577.

—a previous application to the S. J. is an essential step before a revision petition can be entertained in the H. C. 101 I. C. 603:

S. 439. How and when the revisional power of the H. C. can be invoked,—*contd.*

28 Cr. L. J. 475, 19 A. L. J. 425, 41 A. 591, 1927 All. 829 : 102 I. C. 352 : 28 Cr. L. J. 544.

—it is the settled practice of the Allahabad H. C. to refuse to hear an application for revision even after it has been admitted *ex parte*, if the applicant has not first applied to the Dt. M. or the S. Judge for revision 27 A. L. J. 514 : 119 I. C. 444 : 1929 All. 272, 1921 All. 30, 1927 All. 829, 1921 Cal. 76 *Rel on*

—it is not the practice of the H. Courts in India to take action under s. 439 on a report by a Dt. M. which has for its object interference with a decision by a court of Sessions 73 I. C. 269 : 24 Cr. L. J. 573.

—the H. C. is not debarred from exercising its rights of revision in respect of an order of S. J. merely because the original promoter of the petition is the Dt. M. 17 S. L. R. 269 : 83 I. C. 881.

—the H. C. may also exercise its power on its own initiation 1913 P. W. R. 7, 2 Bom. 564

—in Lahore H. C. petitions in revision are entertained only when the Dt. M. or the S. J. is first moved unsuccessfully. 101 I. C. 255 : 1927 Lah. 635 : 28 Cr. L. J. 815.

—this sec. need not be read subject to s. 417 and the H. C. can entertain a reference when the Local Govt. has been moved to prefer an appeal or having been moved has declined to prefer such appeal. 1930 Lah. 159 : 12 Lah. L. J. 5 : 123 I. C. 841. 31 Cr. L. J. 584. 1930 Cr. C. 167, 1926 Pat. 176, 1929 Pat. 139, *Rel on*.

—under the Defence of India Act (IV of 1915) the H. C. has no power to interfere in revision, though Special Tribunal proceedings are judicial. 3 Pat. L. J. 581, 607

—when the M. acts wholly without jurisdiction under the Extradition Act (XV of 1903) as 7 and 10, the H. C. can revise the proceedings 41 C. 400, 39 C. 164, 7 Bom. L. R. 463.

Powers of the H. C. in revision.

Can enter into facts.

—it is competent to the H. C. in revisions to go into the facts and if not satisfied beyond doubt as to the guilt of the accused, to set aside the conviction. 20 A. L. J. 276 : 66 I. C. 177 : 23 Cr. L. J. 241, 99 I. C. 123 1927 All. 147. 28 Cr. L. J. 91.

—a finding of fact should not be usually interfered with in revision ; but when it is not based on any positive evidence but on inferences only it may be interfered with 1930 Cr. C. 417 : 1930 Pat. 209 : 31 Cr. L. J. 249 : 121 I. C. 321 : 11 Pat. L. T. 319.

from entering into a
d the facts in order to
see. 5 Pat. L. T. 538 :

—but when the acquittal of an accused is based on finding of fact only, the H. C. will not interfere in revision 86 I. C. 65 : 26 Cr. L. J. 659 : 1926 Lah. 336, unless it is shown that the evidence on

S. 439. Powers of the H. C. in revision.--*contd.*

the record left no scope for the courts below to come to that conclusion. 1929 Sind 90 : 30 Cr. L. J. 548 : 116 I. C. 99.

—where the Judge after disbelieving the whole prosecution evidence convicted the accused on the basis of certain *ex parte* official reports which were not admissible at all, the H. C. could interfere in revision. 1927 All. 147 : 28 Cr. L. J. 91 : 99 I. C. 123

—the H. C. will not interfere where both the lower courts have concurred to a finding of fact and there is nothing illegal in the procedure 84 I. C. 937 : 26 Cr. L. J. 393 : 1925 Lab. 42.

—under special circumstances the H. C. may, when it thinks fit, enter into the questions of fact and upset the concurrent findings of fact by both the Lower Courts. 28 B. 533, 8 Bom. L. R. 851 : 4 Cr. L. J. 446, 13 P. W. R. 1909 : 11 Cr. L. J. 97, 20 P. R. Cr. 1907 : 6 Cr. L. J. 263, 13 C. W. N. 267 (note), 2 C. W. N. 672, 23 C. 998, 30 P. W. R. 1905, Rat. Un Cr. 177, 9 Bom. L. R. 706 : 6 Cr. L. J. 70, 4 C. L. J. 232, 20 A. L. J. 276 : 66 I. C. 177 : 23 Cr. L. J. 241, 72 I. C. 892 : 24 Cr. L. J. 476 : 1923 Mad. 237, 4 Pat. L. T. 265 : 1 Pat. L. R. 25 : 72 I. C. 959.

—the revisional court does not decide the balance of credibility between two conflicting issues of fact but it may be compelled to dissent from a finding of fact which is either perverse or has been arrived at contrary to well established principles of law. 21 A. L. J. 765.

—in case of misappreciation of evidence by the Lower Court the H. C. must hear the accused. No doubt, the section only says that the H. C. may interfere in revision but "may" is the only word that could be used. 15 Cr. L. J. 285 : 23 Ind. C. 493

—different view in evidence is no ground for interference. 164 I. C. 450 : 28 Cr. L. J. 834 : 1928 Pat. 13.

When the H. C. can deal with the order of discharge

—when the order of discharge of an accused person has the effect of operating to the detriment of a third person he has the right to apply for the revision of the order. 56 C. 1023 : 33 C. W. N. 468 : 1929 Cal. 319.

—the H. C. can set aside the order of discharge of the accused and direct him to be committed for trial. 52 M. 156 : 113 I. C. 546 : 1928 Mad. 1267 : 1928 M. W. N. 312 : 55 M. L. J. 674 : 30 Cr. L. J. 184 (6 A. 40, 15 C. 608, 27 B. 84) *Rel on.*

Can enhance sentence.

—ordinarily the H. C. should be loath to enhance the sentence but there are occasions when the H. C. has every right to enforce its own opinion which may be contrary to the opinion of the District authorities. 1928 All 417.

—enhancement of sentence is a very serious thing and so all the facts and circumstance of the case should be considered. 33 C. W. N. 599 : 49 C. L. J. 432 : 119 I. C. 301 : 1929 Cal. 747 : 30 Cr. L. J. 1033.

—the H. C. may enhance sentence on revision. 11 C. 530, 10 B. 254, 6 A. 622 F. B., 17 P. R. Cr. 1898 F. B., but not on the ground of the accused being an old offender. 21 P. R. Cr. 1902, 43 P. R. Cr. 1905 :

S. 439. Powers of the H. C. in revision.—*contd.*

3 Cr. L. J. 341, 19 P. R. 1905, Rat. Un. Cr. 457, 461, *contra*, 36 P. R. Cr. 1884, nor on the ground of discovery of fresh evidence, 21 W. R. Cr. 47, nor where the accused has undergone the sentence. 29 P. W. R. 1913: 14 Cr. L. J. 529: 21 Ind. C. 471 *contra*, the H. C. can impose additional sentence on revision even where the sentence passed by the lower court has been served up. 1929 Lab 961

—the H. C. will not enhance sentence on a reference by the District M. 1928 Lab 663: 29 Cr. L. J. 235: 107 I. C. 285

—the H. C. should not interfere if the sentence passed involves substantial punishments but it would interfere if the punishment awarded is manifestly inadequate 1929 Lab. 961, 1928 Lab. 507: 108 I. C. 162 29 Cr. L. J. 343, 1928 Lab 951: 29 Cr. L. J. 764: 110 I. C. 796.

—setting aside the conviction with respect to two counts and declining to interfere with the sentence in respect of third does not amount to enhancement of sentence, 1928 Mad 651: 111 I. C. 399: 29 Cr. L. J. 847

—it has been the practice of the Bombay H. C. to accept the conviction as conclusive and to consider the question of enhancement on that basis. 32 B 162.

—as a matter of practice the H. C. will not entertain a revision application for enhancement of a sentence at the instance of a private complainant 33 C. W. N. 605: 50 C. L. J. 176: 1926 Cr. C. 439: 1929 Cal. 785, 48 B 358. 81 I. C. 814: 25 Cr. L. J. 966, 12 O. L. J. 421: 2 O. W. N. 550, 1928 All 419. But in extreme cases it will enhance the sentence 1929 Lab 961: 109, that is when

adequate. 1929

or manifestly

33

—according to the Calcutta H. C., the H. C. can interfere on
enhance the sentence
erfere of its own motion.
Cr. L. J. 979

if the accused the more
serious is the breach and the heavier should be the sentence (in this
case a Deputy Collector was proved to have taken bribes) 29 Bom L
R. 996: 1927 Bom 501 106 I. C. 1005: 28 Cr. L. J. 1012

—where in a case of communal disturbance the Sessions
Judge gave a lenient sentence, there being no violation of any
general principle the H. C. did not enhance the sentence in revision.
1928 All 287: 108 I. C. 567: 29 Cr. L. J. 446

—when an appeal against conviction is filed and the appeal is
admitted it is not desirable to issue notice to enhance sentence
before appeal has been dismissed after being dealt with on its merits.
49 B 450. 87 I. C. 424: 1925 Bom. 268. 26 Cr. L. J. 968, 1930 M.
446: 58 M. L. J. 490 1930 Cr. C. 498.

Can set aside the order of acquittal

—the H. C. can on revision set aside an order of acquittal on
merits. 18 C. W. N. 1244 *contra* 44 A 332

S. 439. Powers of the H. C. in revision.—contd.

—the H. C. can convict the accused on a charge on which the accused has been acquitted in effect. 94 I. C. 134 : 27 Cr. L. J. 566 : 1926 Lah. 361. For other cases on the point see cases under the heading "Revision of orders of acquittal" below.

Can pass one aggregate or consolidated sentence.

—the H. C. may in revision pass one aggregate or consolidated sentence 4 C. W. N. 245.

Can alter the finding and confirm the conviction.

—the H. C. may in revision alter the finding and confirm the conviction. 22 C. 391, 21 C. 827.

Can alter conviction.

—a conviction under s. 186 can be converted into a conviction for an offence under s. 225 (b) by the H. C. in revision. 103 I. C. 833 : 1927 Lah. 708 : 28 Cr. L. J. 753 : 9 Lah. 214 : 29 Punj. L. R. 196.

Can quash conviction.

—the H. C. on application for revision of an order of the S. J. confirming a conviction by a M. directed the application to be converted into one for revision of the order of the M. and quashed the conviction. 20 A. L. J. 198 : 66 I. C. 184 : 23 Cr. L. J. 248.

Can reduce sentence

—to reduce the sentence the H. C. should be satisfied that it is very unreasonable and excessive. 1930 Sind 58 : 1930 Cr. C. 123.

—where after rule was issued by the H. C. against the conviction, the Settlement officer the preparation of a Record considered it and reduced the sentence 473 : 24 Ind. C. 501

Can restore the sentence of the trial Court

—when an accused person applies under this section the H. C. can, in the interest of justice, set aside the order of the appellate court reducing the sentence and restore the sentence of the trial Judge 1926 All. 719 : 6 Cr. R. 274.

—the H. C. can in revision interfere with the excessive sentence 1929 Lah. 187 : 118 I. C. 438 : 33 Cr. L. J. 916

—Can quash commitment

—the H. C. can quash a commitment made by S. J. or Dt. M. 12 C. W. N. 117 : 6 C. L. J. 760, 30 M. 224, 7 C. W. N. 327, 2 A. 398.

Can quash proceedings.

—the H. C. can quash proceedings though such power will only be exercised in exceptional cases. 1928 Lah. 945 : 10 Lah. L. J. 485. When on the evidence it appears that no offence has been committed the H. C. will quash the proceeding. 52 B. 151 : 1928 Bom. 116 : 29 Cr. L. J. 317.

Can consider the case of convicts other than the petitioner.

—where some of several persons convicted preferred revision petition to the H. C., the H. C. in setting aside the convictions of the petitioners could set aside the convictions of other persons also. 1928 Pat. 249 : 29 Cr. L. J. 259 : 107 I. C. 529.

S. 439. Powers of the H. C. in revision.—contd.**Can direct retrial or commitment**

—the H. C. has under ss 435 and 439 all the powers of an Appellate court which include a power to direct a re-trial or commitment. 36 C 994, 7 C W N. 521, 6 C. L. J. 251, 11 C. W. N. 275, (27 C. 126, 6 C. L. J. 705, 33 C. 1252) *Diss.*, 1928 *Mad* 1267 : 1928 M. W. N. 312, 28 L. W. 651, 6 A. 40, 15 C. 608, 27 B. 84.

—but retrial should not be allowed after the whole matter has been thrashed out and the defects brought to light in the course of prolonged proceedings. 29 C. W. N. 408 ; 41 C. L. J. 172 ; 86 J. C. 705 : 1925 Cal. 603

—where on the facts there was *prima facie* case against the accused under a 471 I. P. C. but the M. convicted the accused under s. 196 I. P. C. the H. C. in revision ordered commitment to the Sessions. 30 C W N. 840 ; 44 C. L. J. 113, 96 I. C. 119, 27 Cr. L. J. 871.

When can order further inquiry

—a court of revision cannot order further inquiry merely for disagreement with the conclusion of the M., it can order further inquiry in cases where the M. has not taken sufficient trouble or has come to a perverse decision. 1929 All. 588 ; 117 I. C. 345 ; 30 Cr. L. J. 755 : 1929 Cr. C. 176

Can interfere with an order under s. 528 Cr. P. C.

—although it is not the practice to interfere with an order of the lower court under s. 528 Cr. P. C., it will interfere where there are reasons for so doing. 1928 Pat. 347, 29 Cr. L. J. 373, 108 I. C. 329.

Interference with order under s. 562 Cr. P. C.

—unless the order of a M. under s. 562 is clearly mistaken or injudicious or amounts to a failure of justice the H. C. will not interfere. 85 I. C. 843 ; 47 A. 353 ; 1925 All. 614 ; 26 Cr. L. J. 624, 100 I. C. 127, 1927 Lah. 353, 28 Cr. L. J. 255, 31 C. W. N. 960, 104 I. C. 447, 1927 Cal. 702 ; 28 Cr. L. J. 831, 107 I. C. 775 : 1928 Lah. 926 ; 29 Cr. L. J. 291.

Questions of misjoinder can be raised in revision

—a plea that a joint trial was illegal under s. 239 Cr. P. C. can be raised for the first time in revision. If the point is made out the trial is vitiated even if there is no prejudice. 1925 Cal. 248, 81 I. C. 343 ; 25 Cr. L. J. 807.

—but the H. C. will not interfere with a conviction solely on the ground of a technical illegality relating to misjoinder of charges. 93 I. C. 1054 ; 27 Cr. L. J. 558, 6 Cr. R. 267.

Can interfere with orders that are not final

—the H. C. has wide powers of interference under s. 439 and can interfere even with orders that are not final, where it is apparent
 closed the case was
 ted for an unusual hour
 so was dismissed, the
 H. C. ought to interfere in revision in such a case to set the matters right. 93 I. C. 607 ; 1927 *Mad*. 139, 27 Cr. L. J. 1391.

Can interfere with orders not final.

—the H. C. has wide powers of interference under s. 439 and can interfere even with orders that are not final, where it is apparent

S. 439. Powers of the H. C. in revision,—contd.

that grave injustice would be done by allowing the proceedings to continue. 67 I. C. 589 : 23 Cr. L. J. 429, 105 I. C. 686 : 1927 M. W. N. 835 : 28 Cr. L. J. 974 : 39 M. L. T. 548.

When can give effect to composition.

—this sec. does not authorise the H. C. to give effect to the composition of an offence during the pendency of an application for revision. 20 C. W. N. 1071 : 43 C. 1143. *Contra*. 252 P. L. R. 1904, 7 A. L. J. 103 : 11 Cr. L. J. 203, 1929 Nag. 278 : 1929 Cr. C. 454 : 118 I. C. 681 : 30 Cr. L. J. 960.

—but where a M. refuses to allow composition of an offence compoundable with the leave of the court without rightly exercising the discretion the H. C. can interfere in revision and allow composition. 1929 Pat. 512 : 1929 Cr. C. 272, 55 C. 1190.

Can hear private complainant.

—in hearing a revision the H. C. can hear a private complainant in the case of an offence under ss. 500 and 501 I. P. C. 50 C. 159 : 36 C. L. J. 287, 42 C. 612.

Can interfere with the proceedings of the Subordinate Court.

—the H. C. may stay the further proceedings of the Lower Court under this sec. 1905 A. W. N. 238 : 2 A. L. J. 673 : 20 B. 543, 36 P. L. R. 1909 : 9 Cr. L. J. 131, 3 P. W. R. 1909 : 9 Cr. L. J. 154, 22 C. 131, 1925 Mad. 39 : 47 M. L. J. 373 *Contra*. 85 I. C. 37 : 1925 Mad. 315 : 26 Cr. L. J. 421.

—but s. 439 does not authorise the H. C. to direct a subordinate court to refrain from trying an accused against whom process has been issued by such court. 2 Pat. 257 : 74 I. C. 713 : 24 Cr. L. J. 809.

—ordinarily there is no justification for a H. C. to take up in revision what are really interlocutory matters in a criminal Court. 1930 Lah. 346 : 1930 Cr. C. 394, 1926 Lah. 280, 25 C. 233.

—the H. C. may interfere with all interlocutory proceedings and interlocutory orders. 22 C. 131, 20 W. R. Cr. 23, 130 P. L. R. 1901, 257 P. L. R. 1904, 1 P. W. R. 1909, 2 S. L. R. 25 : 10 Cr. L. J. 237, 103 I. C. 835 : 28 Cr. L. J. 755 : 9 Lah. L. J. 440 : 29 Punj. L. R. 237 : 1927 Lah. 730, 39 M. 561, 1925 All. 311, and the order framing a charge is an interlocutory one. 103 I. C. 835 : 9 Lah. L. J. 410, 28 Cr. L. J. 755 : 29 Punj. L. R. 237 : 1927 Lah. 731; but the H. C. will not do so unless the case is of an exceptional nature. 25 C. 233 *contra*. 45 P. R. 1885.

—it is only in exceptional cases that the H. C. will interfere in pending cases. 83 I. C. 181 : 26 Cr. L. J. 1093 : 1925 Nag. 345, 88 I. C. 189 : 26 Cr. L. J. 1101 : 1925 Sind. 328, 25 C. 233, 89 I. C. 247 : 26 Cr. L. J. 1303 : 1925 Sind. 231, 26 C. 786 : 3 C. W. N. 491, 1899 A. W. N. 212, 1 P. W. R. 1909 : 9 Cr. L. J. 151, 3 P. W. R. 1909 : 9 Cr. L. J. 154, 14 C. W. N. 167 (note), 6 N. L. J. 119 : 73 I. C. 335, 38 C. 68, 112 I. C. 224 : 1929 Lah. 87, or in *parheard* trial. 105 I. C. 803 : 1927 Mad. 975 :

—when the H. C. has stayed proceedings the Lower Court is bound to stop the proceeding, when credible information such as a

S. 439. Powers of the H. C. in revision.—*contd.*

letter or telegram from counsel retained in the case is shown to him. 2 C W. N. 498, 5 C W. N. 110, 19 M. L. J. 375, 16 C. W. N. 1031.

Can inquire into the reasons for discharging jury

—it cannot be said that the H. C. is debarred from enquiring into the validity of the reasons for discharging a jury. 33 C. W. N. 425, 56 C. 1032, 1929 Cal. 343.

Can interfere

—w. S. J. has granted bail the F. Cr. L. J. 1363: 82 I. C. 755. Ref. 1925 Nag. 228.

Can interfere with the order under s. 107 Cr. P. C.

—where the lower court rejected the sureties offered in respect of an order under s. 107 Cr. P. C. and the rejection appeared to be totally unwarranted, the H. C. could direct the lower court to accept the sureties. 48 C. L. J. 143, 29 Cr. L. J. 842, 111 I. C. 394.

Can quash proceedings of civil nature

—where the H. C. is of opinion that proceedings are of civil nature, it has power in revision to quash the whole proceeding. 84 I. C. 351, 26 Cr. L. J. 287, 1925 Lab. 289, 26 Punj. L. R. 422.

Revision of proceedings.

—the H. C. has power under this sec. to revise an order under s. 478. 33 M. 48: 19 M. L. J. 766: 10 Cr. L. J. 420, 3 Ind. O. 934, F. B., 21 M. 124, 34 C. 42, 11 C. W. N. 125, 4 Cr. L. J. 460, 26 B. 785, 1908 A. W. N. 22, 27, 18 P. R. Cr. 1902, 23 A. 249, 26 A. 249, 1907 U. B. R. Cr. 1 P. C.: 6 Cr. L. J. 25, 9 C. W. N. 1030, 23 C. 532, 29 M. 160, 40 C. 477, 17 C. L. J. 245, 17 C. W. N. 647, 19 Ind. C. 197, 14 Cr. L. J. 197, 37 C. 714, 11 Cr. L. J. 357, 6 Ind. C. 473, 14 C. W. N. 808, 32 M. 49, 4 M. L. T. 404, 19 M. L. J. 42, 9 Cr. L. J. 41, 42 C. L. J. 124, 1925 Cal. 1182.

—the H. C. will interfere in revision with direction to prosecute made under s. 476 Cr. P. C. only when that direction is based on grounds merely fanciful, grounds so empty and so obviously wrong that the court granting cannot be said to have formed serious judicial opinion. 25 Bom. L. R. 262, 72 I. C. 359, 24 Cr. L. J. 359.

—the H. C. cannot acting under this sec. revise sanction orders of Civil or Revenue Courts. 26 M. 139, 28 A. 554 F. B., 31 A. 38, 26 A. 249 F. B., 4 L. B. R. 339, 9 Cr. L. J. 21, 17 M. L. T. 268, 16 Cr. L. J. 232, 40 C. 477 F. B., 1901 A. W. N. 172, *contra*, 5 P. R. 1903, 7 P. W. R. 198, 7 Cr. L. J. 281, 23 A. 249, A. W. N. 1901, 59, 26 A. 514, 35 C. 909, 7 L. B. R. 76, 6 Bur. L. T. 144, 20 Ind. C. 752, 14 Cr. L. J. 496, 92 I. C. 454, 1926 All. 229, 27 Cr. L. J. 278, 96 I. C. 877, 1926 All. 577, 27 Cr. L. J. 1021.

—even where all the Lower Courts have concurrently refused sanction, the H. C. may grant it: the refusal proceeds on for the purposes of sec. but such power should

—in an application for revocation of sanction granted by the Lower Court the H. C. is competent to exercise the broad and general

S. 439. Revision of proceedings,—contd.

powers granted under s. 195, whether the application is regarded as one under s. 539 of the Cr. P. C. or s. 622 of the C. P. C. 13 C. L. J. 216 : 9 Ind. C. 706

—where a S. J. refuses to interfere with the order of a M. sanctioning a prosecution the H. C. may, under this sec exercise the power conferred upon an Appellate Court by sec. 195 (b) 30 A. 243, 30 M. 382

—where a civil court has taken action under s. 476 Cr. P. C. the Revisional Court cannot act under s. 439 Cr. P. C. 85 I. C. 363 : 26 Cr. L. J. 523.

—as the amendment of the Cr. P. C. has abolished sanction replacing complaint to be filed by the Court and the same having been made appealable, the H. C. should not ordinarily interfere in revision when the Court below insists on proceeding with the prosecution. 95 I. C. 312 : 27 Cr. L. J. 776 : 27 Punj. L. R. 314.

—appellate orders refusing to withdraw complaint under s. 476 B. should not ordinarily be interfered with in revision. 99 I. C. 867 : 27 Cr. L. J. 1011.

—the H. C. can interfere with an order passed under s. 144. 42 P. R. Cr. 1885, 8 P. R. 1904, 10 Cr. L. J. 210, 13 C. W. N. 283 (note), 14 C. W. N. 114 (note), or under s. 114, 2 C. W. N. 572, 12 C. W. N. 1044, 13 C. W. N. 119 (note) 19 C. 127, or passed under sec. 145, 27 C. 981, 30 C. 443, 1904 C. W. N. 234, 7 Pat. L. T. 799 : 27 Cr. L. J. 142 : 91 I. C. 814 : 1926 Pat. 196, 22 L. W. 831, 5 C. W. N. 429, 14 C. W. N. 74 (note), 31 M. 416, 6 C. L. J. 182. 6 Cr. L. J. 192, 2 P. R. Cr. 1899 F. B., 23 P. R. Cr. 1902, or under sec. 522 36 C. 44, 27 C. 415

—the H. C. which can confirm the order under s. 137 can also modify that order to such extent as may seem fit. 1929 All. 220 : 116 I. C. 786 : 27 C. L. J. 670 : 30 Cr. L. J. 670.

—further application for revision does not lie against an order passed by the Sessions Judge in revision of the order passed by the Magistrate on appeal against a notice of demand under s. 110 of the Bombay City Municipal Act. 1928 Bom. 376 : 30 Bom. L. R. 1084

—an order of a Magistrate under s. 113 (4) of the Railways Act is an administrative or a ministerial order and the proceedings before him are not criminal proceedings and is not subject to revision. 1930 Sind 162 : 1930 Cr. C. 616, 1926 Sind 57, 1927 Sind 23. fol.

If costs can be awarded.

—the H. C. cannot award costs incurred before it on the hearing of a Criminal Revision against an order under Chap XII (ss. 145-148) Cr. P. C., 48 M. 262 : 1925 Mad. 438 : 86 I. C. 147 : 26 Cr. L. J. 707, F. B., 1922 Mad. 502 F. B., fol.

Notice to accused, Sub-sec. (2)

—the language of this sub-sec. is mandatory. An order of the Court in revision, if it is made with the prejudice of the accused giving the accused an opportunity to be heard, is irregular and the order is invalid. N. 168, Rat. 179.

S. 439. Notice to accused, Sub-sec. (2)—contd.

—under this sec. the H. C. has no power to set aside the order of the M. under s 362 (1—A) Cr. P. C. and sentence the accused to ^{the} C. without giving him an
960; 47 C. L. J. 358; 55
3 Cr. L. J. 831.

—the H. C. may by virtue of sec. 423 issue a warrant of arrest without previous notice to the accused because that is not an order prejudicing the accused under this sec. 8 L. B. R. 290

Revision of orders of acquittal. Sub-sec. (4).

—as a general rule it is expedient not to interfere, on revision, with an order of acquittal, at the instance of a private person, unless it is demanded in the interest of public justice, 42 C. 612; 19 C. W. N. 184, 41 B 560, 21 C. W. N. 250 44 C. 703, 1925 Oudh, 321; 2 O. W. N. 50, 89 I. C. 388; 26 Cr. L. J. 1348, 102 I. C. 219; 1927 Nag. 170; 28 Cr. L. J. 523, 106 I. C. 450 1928 Lah. 185; 29 Cr. L. J. 34

—powers in criminal revision are not intended for the gratification of private malice or to vindicate the position of private prosecutor when technical offence has been committed. 1930 Pat. 241; 9 Pat 113. 1930 Cr. C. 509

—in private prosecution the H. C. will not ordinarily interfere with the order of acquittal unless it is satisfied there has been an error of law or gross miscarriage of justice or it is for public interest. 33 C. W. N. 576. 1929 Cal 639; 30 Cr. L. J. 1013; 119 I. C. 130; 1929 Cr. C. 357.

—the H. C. can in revision set aside an order of acquittal on merits 16 C. W. N. 1244.

—the H. C. will interfere in revision against acquittal only
public justice. 1922
583 F. B. 42 C.
6 Pat. L. T. 833;
L. J. 433, 23 A. L.
26 Cr. L. J. 393;
C. 668; 1925 Lah.
9. 100 I. C. 1053.

1928 Lah. 844; 109 I. C. 362; 29 Cr. L. J. 538, 1930 Lah. 159, 123 I. C. 841; 31 Cr. L. J. 584. 1930 Cr. C. 167.

—this sec. need not be read subject to s 417 Cr. P. C. and the H. C. can entertain a reference when the Local Govt. has been moved to prefer an appeal or having been so moved has declined to prefer such appeal. 1930 Lah. 159; 31 Cr. L. J. 584, 12 Lah. L. J. 5. 123 I. C. 841; 1930 Cr. C. 167, 1929 Pat. 139. 1926 Pat. 176, Rel. on.

—In revision the H. C. cannot convert a finding of acquittal
858. 23 Cr. L. J. 202, 87
B 510. 2 Pat. L. R. 250;
94 I. C. 132. 27 Cr. L.
865. 86 I. C. 801; 1925
Nag. 87; 115 I. C. 169;

S. 439. Revision of orders of acquittal. Sub-sec. (4).—contd.
 30 Cr. L. J. 405, 53 B. 564; 31 Bom. L. R. 529; 30 Cr. L. J. 1062;
 1929 Bom. 306; 1929 Cr. C. 135; 119 I. C. 643.

—where the accused was charged by the Sessions Judge under s. 302 I. P. C. but was convicted under s. 304 I. P. O. the H. C. could not in revision alter the finding of acquittal under s. 302 into one of conviction under that sec., 50 A. 722; 1928 M. W. N. 749; 111 I. C. 332; 29 Cr. L. J. 828; 30 Bom. L. R. 1572; 48 C. L. J. 397; 33 C. W. N. 1; 55 M. L. J. 786; 29 Punj. L. R. 575; 1928 P. C. 254; 50 W. N. 911 P. C. (44 A. 332, 48 B. 510) *Approved*, 37 M. 119 *Dist* 115 I. C. 854. 1929 Lab. 615. 1929 Cr. C. 182; 30 Cr. L. J. 552.

—but the H. C. can convict an accused of an offence under another section of the I. P. C. upon which he has not been acquitted by the lower Court. 94 I. C. 132; 27 Cr. L. J. 564; 1926 All. 332.

—a mere error of procedure by itself is not good ground for
 82 I. C. 274; 25 Cr. L. J. 1266;
 f law is. 92 I. C. 870; 1926 All.

—revision in case of acquittal should not generally be encouraged 15 B. 349, 1 A. 139 F. B., 6 A. 484, 14 M. 363, 13 P. W. R. Cr. 1907; 72 P. L. R. 1908; 5 Cr. L. J. 438, 27 A. 359, 25 A. 128, 24 A. 346, 9 Bom. L. R. 156; 5 Cr. L. J. 171, 6 C. L. J. 758; 10 Cr. L. J. 417, 21 W. R. Cr. 62, 2 C. L. R. 389, 5 N. L. R. 4; 9 Cr. L. J. 211, 6 S. L. R. 120. 13 Cr. L. J. 771; 17 Ind. C. 403.

—the H. C. can interfere in revision with an order of acquittal on the application of a private prosecutor. 27 O. 320, 11 C. L. J. 113. 25 A. 128, 2 A. 448.

—the passing of an order under s. 471 Cr. P. C. after an acquittal has been recorded cannot be said to alter a finding of acquittal into one of conviction within cl. (4) of sec. 439. 42 M. L. J. 72; 1922 M. W. N. 10; 65 I. C. 423; 23 Cr. L. J. 71.

—it cannot be said that "acquittal" in s. 439 Cr. P. C. means a complete acquittal on all the charges framed. 48 B. 510, 50 M. 259; 100 I. C. 1053; 1927 M. 582; 28 Cr. L. J. 397. *Contra*. "Acquittal" means a complete acquittal or discharge of all the allegations and facts charged. 101 I. C. 892; 28 Cr. L. J. 508; 1927 Lab. 369.

—alteration of one section into another by the S. J. cannot be said to be a case of acquittal under the original section within cl. (4). 48 M. 774; 1925 M. W. N. 113. 1925 Mad. 480; 26 Cr. L. J. 755; 86 I. C. 339.

No revision where right of appeal exists. Sub sec. (5).

—the H. C. is precluded from exercising the powers of revision at the instance of the party who had a right of appeal but did not exercise it 1 C. L. R. 352, 3 C. 573, 8 Bom. L. R. 851, 2 A. 276, 1904 P. L. R. 1, 44 M. L. J. 366, 35 B. 253, 8 S. L. R. 229, 14 S. L. R. 173, 44 M. L. J. 366, but in exceptional case the power of revision may be exercised even where the accused had the right of appeal. 6 A. 484 20 L. W. 914.

S. 439. Sub-sec. (6). The accused can show cause against conviction—*contd.*

—In showing cause against his conviction the accused is entitled to argue that estimate of evidence made by the courts below is erroneous and that the conviction is against weight of evidence upon the record. 1928 All. 150, the accused cannot be restricted with any consideration that his application was in revision only and not an appeal. 1929 Cr. C 150 · 1929 Lah. 584 : 30 Punj. L. R. 437 : 116 I. C. 883 : 30 Cr. L. J. 699.

—a *Quere* has been made by J. Wallace of the Madras H. C., where after the dismissal of a revision petition against the conviction an application for enhancement of sentence is made whether the accused has a right to reargue the question of legality of the conviction. 85 I. C. 727 : 1925 Mad. 993 : 26 Cr. L. J. 583 See the following cases.

—but it has been held that when an appeal against a conviction has been dismissed and subsequently permission has been obtained to lunch proceedings for enhancement of the sentence, the accused is not at liberty to adduce arguments on the merits of his conviction or to re-open the question of conviction. Sub sec (6) is applicable only where the matter was not already agitated before the H. C in appeal. 97 I. C. 805 : 1926 Bom. 555 : 27 Cr. L. J. 1173 : 28 Bom. L. R. 1051, 100 I. C. 234 : 28 Cr. L. J. 266 : 28 Punj. L. R. 559, 1927 Sind 39 : 98 I. C. 49 : 27 Cr. L. J. 1233 : 32 Bom. L. R. 1285 but the accused can show cause against his conviction to the extent that the conviction was based on no legal evidence or was manifestly erroneous. 111 I. C. 856.

—where a previous petition for revision against conviction has been rejected and notice has subsequently been served on the accused for enhancement of sentence he cannot in showing cause reopen the validity of conviction 1929 Lah. 797 : 10 Lah. 211 : 30 Punj. L. R. 409 : 117 I. C. 669 : 30 Cr. L. J. 815 : 1929 Cr. C 429.

Limitation.

—according to practice an application for revision should be filed within 60 days from the date of the order complained of exclusive of the time necessary to take copies. In exceptional circumstances this rule may be departed from. 20 O. W. N. 1170 : 43 C. 1029 : 17 Cr. L. J. 419, 1929 Pat. 404 : 1929 Cr. C. 201 : 119 I. C. 401 : 8 Pat. 468 : 30 Cr. L. J. 1053, time taken before the Session Judge in appeal when may be deducted. 1929 Pat. 404 : 119 I. C. 401 : 30 Cr. L. J. 1053 : 8 Pat. 468.

—persons coming to the H. C. in revision against an order under s. 107 Cr. P. C. are expected to do so with the utmost promptitude and within thirty days 97 I. C. 652, 1926 All. 767 : 27 Cr. L. J. 1132.

—If delay is unexplained, the H. C. will exercise its discretion against interference in revision, 27 A. 168, 1905 A. W. N. 65, 13 A. 203, 1907 A. W. N. 204 : 6 Cr. L. J. 153, 1 P. L. J. 165, when the delay is very great, nine months, the H. C. will not interfere. 8 A. 514, even if the application be by the Government. 6 A. 484.

S. 439. Limitation.—*contd.*

—when the application for revision has been made after the expiry of the period allowed for appeal it is proper that the Court should ask the applicant to give reasons for the delay and if these be not sufficient to dismiss the application. 1930 Lab. 401 : 126 I. C. 395 : 1930 Cr. C. 941

S. 440. (Optional with court to hear parties).

—the Calcutta H. C. always hears counsel in important matters. 19 C 389, 11 C. W. N. 316, so also Allahabad H. C. 6 A. L. J. 237 and the Bombay H. C. 1929 Bom. 443 : 31 Bom. L. R. 1144 : 1929 Cr. C. 555 ; but the Madras H. C. does not. 14 M. 363.

—although in cases of importance the counsel is heard in revision there is no rule of law or practice on that point. 1927 All. 724 : 25 A. L. J. 1010 : 106 I. C. 680 : 29 Cr. L. J. 88

—in proper case the High Court can hear the complainant on the subject of his complaint if there has been any denial of justice or if some gross or palpable error has been committed in the Court below. 1929 Bom. 443 : 31 Bom. L. R. 1144 : 1929 Cr. C. 555

—no party has any right to be heard personally or by pleader in revisional proceedings 26 Cr. L. J. 527 : 1925 Oudh 558.

—party at whose instance sanction is granted has no *locus standi* to show cause why the rule as to the revocation of the sanction should not be made absolute. 31 C 811

—this sec. is not applicable to the hearing of appeal under s. 105 (b), 12 C. W. N. 248 : 9 Cr. L. J. 189.

—where an accused applied in revision to the H. C. and pending the revision he was let off on bail and thereupon he disappeared, the H. C. would not hear his application. 71 I. C. 704 : 1923 All 327 : 24 Cr. L. J. 240.

—the rule in this sec. is the general rule provided by the Legislature, and it must be taken as a legislative rescission of the general principle that persons are entitled to be heard before any order affecting them to their prejudice can be made 10 C. 263.

question whether the Dt. M
e 437 without giving notice
opportunity of being heard.

10 C 263
—under this sec. it is open to the H. C. to determine the question raised by a rule without hearing the counsel or pleader for or against the rule 10 C L. J. 80.

—the revisional power of the H. C. is exercised at its own discretion and no petitioner has a right to be heard. 23 M. L. J. 371.

S. 441. Statement by Presidency M. of grounds of his decision to be considered by H. C.

—a statement submitted by a Pr M. under this sec. must be regarded as a completion of the record and possesses a conclusive character as against affidavits. 12 B. 337.

S 441. Statement by Presidency M. of grounds of his decision to be considered by H. C.—*contd.*

—a statement under this sec. takes away any irregularity in the proceedings of a M. caused by the omission to record reasons before referring case under s. 202 or dismissing a complaint under s. 203 5 M. L. T. 79.

—this sec. is not enacted to enable the Presidency M. to give fresh reasons contradictory to those already given to enable him to supply reasons where he has given no reasons at all, 1929 M.W.N. 893.

—a bench of Pr. Ms. imposing a sentence of imprisonment for an offence must record reasons for the conviction. The omission to do so in a case where no record of the evidence was taken is a grave irregularity, but still having regard to the reasons for conviction disclosed in the record submitted under this sec., the H. C. did not set aside the order. 46 M. 253.

S. 442. (H. Court's order to be certified to lower court).

—the sec. provides that the H. C. shall certify its decision or order to the Lower Court, but it does not contain any provision that the H. C. will certify its decision to itself; this shows that the H. C. cannot revise its own judgment 1909 P. R. 4.

SS. 443-449 (European British subject.)

—an European British subject who has waived right of trial by jury may in a warrant case reconsider his position before he is called on for defence 50 C. 689 : 74 L. C. 1040 : 24 Cr. L. J. 849.

—the provisions give a privilege to the accused who is an European British subject 8 C. 83.

—but a person may relinquish his right to be so dealt with. 37 C. 467 : 14 C. W. N. 1114 : 11 Cr. L. J. 453 : 7 Ind. C. 359, and thereby he loses all the benefits of the special procedure laid down in this chapter, 16 M. 308, but his right must be distinctly known to him. 6 C. 83, 6 C. L. J. 463, 136 P. L. R. 1905 : 7 Cr. L. J. 274 Ref. 3 C. W. N. 279 (note), 6 C. W. N. 202

—the waiver is revocable 1 P. R. Cr. 1908 : 4 P. W. R. 190 : 136 P. L. R. 1908 : 7 Cr. L. J. 274, 17 P. R. Cr. 1878, 24 A. 511.

—where a public servant makes a complaint under the orders of the Govt. as such public servant this chapter does not apply. 97 I. C. 17 : 1926 Pat. 566 : 27 Cr. L. J. 1041 : 7 Pat. L. T. 367, 95 I. C. 306 : 1926 Sind 230 : 27 Cr. L. J. 770.

—the words "enquire into or try any charge" in sec. 443, apply to s. 107 proceedings 36 C. 163.

own status. If the claim is
will have to prove that the
is or any of them are respec-
subjects or Indian and European
14 sub-sec. (1) he will have to
both of an European British
it is expedient for the ends of
under chapter XXXIII, 29 C.

Ss. 443-449. (European British Subject)—contd.

—where an European employee of a Railway Administration launches a complaint against a British Indian subject, the latter cannot claim to be tried under Chapter XXXIII Cr. P. C. 83 I. C. 894 : 3 Bur. L. J. 147 : 1924 Rang. 373.

—the right to be tried by jury is a substantive right and where an European British subject had been committed in the Sessions and before trial the Amending Act of 1920 came into force, he cannot be deprived of rights by the change 6 Lab. 262 : 1925 Lab. 416.

—failure to avail of sec. 528A does not debar an accused from relying on s. 443 Cl. (a) or (b). 29 C. W. N. 447 : 52 C. 347 : 1925 Cal. 14, 84 I. C. 1041 : 26 Cr. L. J. 401.

—right to be tried under this chapter can be raised at the time of application for leave to appeal 52 C. 347 : 29 C. W. N. 447 : 1925 Cal. 14 : 84 I. C. 1041 : 26 Cr. L. J. 401.

—the word "European" in s. 450 means "persons born in Europe." 16 A. 88

—a judge is not bound to try a native Christian with the aid of Christian jury. 1 W. & Cr. 2

—the Dt. M. cannot deprive the accused of his right to a trial by jury by transferring the case to another court. 2 P. & Cr. 1896.

—if the accused does not specially claim to be tried by jury, he is not entitled to it. 27 A. 397, 5 P. R. 1835.

—the court's power of punishment is not restricted by the fact that the accused is an European British subject nor does that fact *ipso facto* entitle him to a right of any special procedure. 1929 Lab. 187 : 118 I. C. 433 : 30 Cr. L. J. 918

—by "ordinary cause" is here meant the cause which would be followed in the absence of a claim by the accused to be dealt with under the provisions of Ch. XXXIII or in the absence of a Notification by the L. Govt. under s. 269. 5 Lab. 515

—the expression "in any subsequent stage of the same case" in s. 454 Cr. P. C. includes the stage of revision. 45 M. L. J. 800 : 18 L. W. 895

—the H. C. has power to issue a writ of Habeas Corpus to unaffiliated places and even in cases of persons who are not European British subjects. 43 M. L. J. 396 : 81 M. L. J. 304 : 1922 Mad. 499 : 23 Cr. L. J. 614 : 38 I. C. 838 F. B.

—where the accused claimed to be tried as an European British subject under Ch. 33 Cr. P. C. and an order directing trial

did not take any steps
tried in the ordinary way,
ld rely on s. 442 (1) Cr.
fiction even though there

might not be any foundation for his claim to be tried under Ch. 33 Cr. P. C. 29 C. W. N. 260 : 41 C. L. J. 87 : 86 I. C. 38 : 26 Cr. L. J. 662 : 1925 Cal. 501.

—the trial must be by jury unless the accused desires otherwise. 85 I. C. 380 : 26 Cr. L. J. 40 : 1925 Lab. 235 F. B.

Ss. 443-449 (European British Subject)—contd.

—the provisions of this sec. are mandatory and a Magistrate after deciding that he had no jurisdiction, cannot assume jurisdiction against the Indian subject by discharging the European British subject. 51 A. 483: 1929 All. 84: 30 Cr. L. J. 218: 113 I. C. 761: 27 A. L. J. 188.

—omission of the M. to inform the accused of his right under this Chapter as provided by s. 447 is cured by s. 534 Cr. P. C. 89 I. C. 459: 1925 Rang. 239: 26 Cr. L. J. 1371.

—where an European British subject was tried and convicted by a judge of the H. C. sitting in Sessions and applied for leave to appeal under s. 449 (1) (3) and filed an affidavit, the affidavit was admissible; the rule that the accused person cannot be sworn as a witness does not apply to an accused who is not under trial. 54 I. C. 52: 1927 Cal. 307: 101 I. C. 657: 28 Cr. L. J. 481.

—as a trial under s. 449 (1) (c) is not on a committal and as therefore there has been no decision whether Ch. XXXIII is applicable to the trial or not, the legislature has given an opportunity to the court to decide the question of status of the accused only and not to enter into the merits of the appeal and negative it and a Division Bench rather than a single Judge should dispose of the application as no appeal would lie against the decision of a single judge refusing leave. 29 C. W. N. 458: 41 C. L. J. 325: 86 I. C. 659: 52 C. 636: 86 I. C. 659: 26 Cr. L. J. 835: 1925 Cal. 673, 29 C. W. N. 447: 40 C. L. J. 256: 52 C. 347: 1925 Cal. 14: 84 I. C. 1041, *Ref.*

—failure of the accused to put forward a claim to be dealt with as an European British subject before the M. or at the Sessions trial before the H. C. does not debar him from relying on his right

s. 449 (1) (c)
application
appeal under
given after
regulations are
325 Cal. 14.

—under s. 449 in a case tried by jury an appeal lies to the H. C. on point of law as well as of fact. 88 I. C. 857: 1925 Lah. 401: 26 Cr. L. J. 1241: 26 Punj. L. R. 263.

—an appeal from the original Criminal Sessions of the H. C. under s. 449 (1) governed by the Article 155 of the Limitation Act as appeals from the Court of Sessions in the Muffassil. 53 G. 746: 98 I. C. 248: 1926 Cal. 1203: 27 Cr. L. J. 1304.

—under the Calcutta H. C. Rules (1914 Rr. 1 and 4) Vakils are excluded from appearing in an appeal from the H. C. Sessions. 32 C. W. N. 319: 56 C. 858: 1928 Cal. 675.

S. 464. (Procedure in case of accused being lunatic).

N.B.—By the amendment, cl. 1 (A) has been newly introduced and in cl. (2) the words "shall record a finding to that effect" have been added.

—the law presumes lucid intervals. Rat. Un. Cr. 172.

S. 464. (Procedura in case of accused being lunatic)—*contd.*

—the provisions of this Chapter should not be construed to override the general rules of procedura except where they are incompatible. 11 P. R. Cr. 1894.

—a M. who finds that an accused person was of unsound mind both when he committed the offence and at the time of the trial, should pass an order under ss. 461 and 466. A. W. N. 1900 47 U. B. R. 1892—1896 Vol. 150.

—ss. 464 and 465 have nothing to do with the question whether the accused person was or was not of unsound mind at the time of alleged commission of the offence. 1900 A. W. N. 47

—the inquiry under this sec. will only affect the prisoner's trial and not the result after trial. 24 W. R. Cr. 5, 10 B. 512, 12 M. 459.

—when an issue is raised as to the soundness of the mind of the accused the court is bound to inquire, before it begins to record evidence, whether the accused is or is not incapacitated by unsoundness of mind from making his defence. Subsequent inquiry does not cure the defect. 42 A. 137, 25 A. W. N. 2.

—there is no provision of law making it obligatory on the committing M. to order a medical inquiry upon a defence of lunacy. It is only when the accused appears to be mentally infirmed to take his trial that the issue of insanity must be tried before the trial is proceeded with. 1928 Lah. 796; 9 Lah. 371, 106 I. C. 796; 29 Cr. L. J. 204.

—when the M. is of opinion that the accused is of unsound mind incapable of making his defence he cannot try the accused. 2 Weir 581, 1 W. R. 11, 1882 A. W. N. 106, 1900: W. N. 47 10 W. R. 37.

—a M. cannot consign a lunatic to an asylum or jail on his own unprofessional opinion without having the deliberate statements of the medical officer reduced into writing. 1 Bur. L. R. 87.

—the Medical officer should be called as a witness and carefully examined. 9 W. R. 23, 2 Weir 580.

—when the evidence of the Medical Officer is not satisfactory evidence of ordinary habits and behaviour and the demeanour of the accused should be let in. 5 C. 826.

—when the accused states in his examination under s. 364 that he was not in his senses when he tried to commit the offence charged, the court should act under this sec. 15 A. L. J. 239, 39 I. C. 310.

—the word "postponed" used in the sec. is different from "adjourned." The subsequent trial after insanity has ceased may be by a different judge and assessors. 3 Pat. L. J. 291.

S. 465. (Procedure in case of person committed before S. C. or H. C. being lunatic).

N. B. By the amendment, the words "and the jury, if any, shall be discharged" have been added to cl. (1).

—the provisions of this sec. are mandatory. When the Session Judge's mind is not free from doubt as to the accused's mental

Ss. 443-449. (European British Subject)—contd.

—the provisions of this sec. are mandatory and a Magistrate after deciding that he had no jurisdiction, cannot assume jurisdiction against the Indian subject by discharging the European British subject. 51 A. 483; 1929 All. 84; 30 Cr. L. J. 218; 113 I. C. 784; 27 A. L. J. 188.

—omission of the M. to inform the accused of his right under this Chapter as provided by s. 447 is cured by s. 534 Cr. P. C. 89 I. C. 459; 1925 Rang. 239; 26 Cr. L. J. 1371.

—where an European British subject was tried and convicted by a judge of the H. C. sitting in Sessions and applied for leave to appeal under s. 449 (1) (3) and filed an affidavit, the affidavit was admissible; the rule that the accused person cannot be sworn as a witness does not apply to an accused who is not under trial. 54 I. C. 52; 1927 Cal. 307; 101 I. C. 657; 28 Cr. L. J. 481.

—as a trial under s. 449 (1) (c) is not on a committal and as therefore there has been no decision whether Ch. XXXIII is applicable to the trial or not, the legislature has given an opportunity to the court to decide the question of status of the accused only and not to enter into the merits of the appeal and negative it and a Division Bench rather than a single Judge should dispose of the application as no appeal would lie against the decision of a single judge refusing leave. 29 C. W. N. 458; 41 C. L. J. 325; 86 I. C. 659; 52 C. 636; 86 I. C. 659; 26 Cr. L. J. 835; 1925 Cal. 673; 29 C. W. N. 447; 40 C. L. J. 256; 52 C. 347; 1925 Cal. 14; 84 I. C. 1041, *Ref*

—failure of the accused to put forward a claim to be dealt with as an European British subject before the M. or at the Sessions

—under s. 449 in a case tried by jury an appeal lies to the H. C. on point of law as well as of fact. 88 I. C. 857; 1925 Lab. 401; 26 Cr. L. J. 1241; 26 Punj. L. R. 263.

—an appeal from the original Criminal Sessions of the H. C. under s. 449 (1) governed by the Article 155 of the Limitation Act as appeals from the Court of Sessions in the Muzaffar. 53 C. 746; 98 I. C. 248; 1926 Cal. 1203; 27 Cr. L. J. 1304.

—under the Calcutta H. C. Rules (1914 Rr. 1 and 4) Vakils are excluded from appearing in an appeal from the H. C. Sessions. 32 C. W. N. 319; 56 C. 858; 1928 Cal. 675.

S. 464. (Procedure in case of accused being lunatic).

N.B.—By the amendment, cl. 1 (A) has been newly introduced and in cl. (2) the words "shall record a finding to that effect" have been added.

—the law presumes lucid intervals. Rat. Un. Cr. 172.

S. 466. Release of lunatic pending investigation of trial—
contd.

—after finding that the accused is insane, the trial should not be proceeded with 20 A. L. J 47, 2 A. W. N 106

S. 467. Resumption of inquiry or trial.

—when the trial is resumed after postponement, it should be commenced *de novo*. 2 Weir 582.

S. 468. (Proceduee on accused appearing before M. or court.)

—when the trial is resumed it should be commenced *de novo*. 2 Weir 582

S. 469. (When accused appears to have been insane.)

—where the committing M. is of opinion that the accused is sane at the time of trial he must proceed in accordance with the provisions of this sec 1928 Lab. 796 · 29 Cr. L. J 204 9 Lab 371 : 106 I C. 796.

of sound mind at the time
and at the time of commit-
the accused on that ground
2 Weir 582, 9 W. R. 23.

—the law presumes lucid intervals Rat Un. Cr 172

—if the court completes the trial and orders the accused to be detained in an asylum, pending the orders of the Local Govt. the H. C. will revise that order. 20 A. L. J 47.

S. 470. (Judgment of acquittal on ground of lunacy.)

—insanity must be distinctly proved Every man is presumed to be sane until the contrary is proved. 20 W. R. 70, Rat. Un Cr. 172.

—when the M finds the accused to be of sound mind at the time of trial but was suffering from temporary insanity while he committed the offence he should not discharge the accused but should acquit him and proceed under ss. 470 and 471. 2 Weir 582, 17 C. P. L. R. 113.

S. 471 (Person acquitted on the ground of lunacy to be kept in safe custody)

N. B. By the amendment the word "finding" has been substituted for the word "judgment" and the word "detained" has been substituted for the word "kept" and the words "and shall report the action taken to the Local Govt" and a proviso regarding detention in lunatic asylum have been added.

—the intention of the Legislature in amending s 471 was that the court in a case where it has been found that an offence has been committed by a lunatic, should be kept in safe custody in such place and manner as the court thinks fit. Then it is for the Govt. under their own powers to decide the future fate of the person concerned. 25 Bom. L. R. 286 · 1923 Bom. 261 : 84 I. C. 652 : 26 Cr. L. J. 348.

S. 471. (Person acquitted on the ground of lunacy to be kept in safe custody)—*contd.*

—the effect of amendment is that the Ms. or Courts are no longer required to report cases for the order of the Local Govt. as are themselves competent to direct the detention of the accused in an asylum or jail or some other place prescribed for the reception of criminal lunatics. 8 L. B. R. 290.

—s. 471 does not compel the courts to send the accused to the lunatic asylum; all that is necessary to see is that such safeguards are taken as would keep him from mischief. 43 M. L. J. 72; 65 I. C. 423; 23 Cr. L. J. 71

—"detained in safe custody" in sub-sec. (1) of sec. 471 does not mean "detained in the custody of friends or relations" All that the M. or the Sessions Judge can do is to detain the accused in safe custody and to report the matter to the Local Govt. who can deliver the accused to any relation or friend for safe custody. The M. or Judge cannot himself pass orders as to the custody of the accused. 36 C. 208; 1928 Cal. 653; 48 C. L. J. 148; 29 Cr. L. J. 817; 111 I. C. 399

—persons who are not insane but labour under defects which render their trial impossible should be treated as insane persons and confined during the King's pleasure in accordance with English practice. 1889 P. R. 37. So also as regards a deaf and dumb person unable to understand the proceeding of the trial. 1911 P. R. 13.

—an order making over an accused person to his brother for safe custody, on the ground of weak intellect of the accused, cannot be passed upon the mere report of the Civil Surgeon. 2 Weir 580

—where a person murdered his father on the supposed direction of the Goddess Kali and his subsequent movements were extremely strange in as much as he took the head of his father and walked along a street quietly, it was a case to which s. 84 I. P. C. applied and the case should be dealt with under s. 471 Cr. P. C. 32 C. W. N. 341; 1928 Cal. 238

—where the court below while acquitting an accused on the ground of insanity omitted to pass orders under s. 471 the H. C. in revision can pass the necessary orders. 42 M. L. J. 72; 65 I. C. 423; 23 Cr. L. J. 71.

—Report to Local Govt. is not necessary now. 54 I. C. 251 (C).

S. 476. (Procedure in cases mentioned in sec. 195.)

N.B.—For sec. 476 the following sec. has been substituted and the amendment has settled many of the disputed points.

"476 (1) When any Civil, Revenue or Criminal Court is, whether an application is made to it in this behalf or otherwise, of opinion that it is expedient in the interests of justice that an inquiry should be made into any offence referred to in sec. 195, sub-section (1), clause (b) or clause (c), which appears to have been committed in or in relation to a proceeding in that court such Court may after such preliminary inquiry, if any, as it thinks necessary, record a finding to that effect and make a complaint thereof in writing signed by the presiding

S. 476. (Procedure in cases mentioned in sec. 195)—contd.

officer of the Court, and shall forward the same to Magistrate of the
security for the
if the alleged
to do, send the
over any person

residency Magis-
283.
According to law

and as if upon complaint made under section 200.

(3) Where it is brought to the notice of such Magistrate, or of any other Magistrate to whom the case may have been transferred, that an appeal is pending against the decision arrived at in the judicial proceeding out of which the matter has arisen, he may, if he thinks fit, at any stage adjourn the hearing of the case until such appeal is decided."

Scope and applicability of the sec.

—under s. 476 as amended in 1923, it is not essential that the proceeding in respect of which action is taken should be of a judicial character, 83 Ind C 730 26 Cr. L. J. 170: 4 Pat 24: 3 Pat. L. R. 51: 6 Pat. L. T. 225, or should form a part of the judgment preceding *habeas* it or at least as soon after the termination of the judgment as to make the order under section 476 a part of the judgment. 92 I. O. 456. 1926 *Mad.* 238: 27 Cr. L. J. 280

—under the amended section it is not only the court where the offence is committed but also the court which hears an appeal from that court that is entitled to proceed under this section and the court by an

Cr. L.J. 280

only matters

410 A and 410 B is to sweep away the cloud of rulings which threatened to smother the original enactment and to lay down a simplified procedure as to complaints. 10 Pat L T. 77: 1929 Pat. 92: 115 L. C. 882: 30 Cr L J. 545.

—the fact that no action could be taken under s 476 as it stood prior to amendment, and the proceedings had accordingly to be deemed before amendment, does not preclude action under

or persons, who according to him has committed the offence. 83
Ind. C. 73 (Pat.).

Cr. P. C. no complaint is in any sense invalid merely because the accused has not had an opportunity to show cause against the complaint being made. 10 Pat. L. T. 77: 1929 Pat. 92: 115 I. C. 882: 30 Cr. L. J. 545.

S. 476. Scope and applicability of the sec.—contd.

—the court must be satisfied that there is a *prima facie* case and it is not sufficient that the Magistrate to whom complaint is made under s. 476 is entitled to hold an inquiry under s. 202 Cr. P. C. 83 Ind. C. 703 (P.)

—under this sec. a complaint may be made by the court either on an application or otherwise, so whether the person making an application was a party in the original suit or not is immaterial. 1929 Pat. 242 : 8 Pat. 736 : 120 I. C. 629 : 31 Cr. L. J. 143 : 11 Pat. L. T. 75.

—under s. 476 as amended, the court is directed, in case it thinks that proceedings should be taken, to make a complaint in writing signed by the presiding officer and forward the same to M. of the first class having jurisdiction. 48 B. 401 : 81 I. C. 947 : 25 Cr. L. J. 1123.

—when a Judge formulates a complaint under s. 476, it is valid only in respect of persons who are parties to the proceedings before the Judge. 3 Rang. 95, 2 Rang. 374, 1928 Sind 69, *contra* 1928 All. 510 : 110 I. C. 108 : 29 Cr. L. J. 652

—the direction of the Civil Court to a Magistrate to hold the preliminary inquiry through the police is not sufficient compliance with the provisions of the sec. 105 I. C. 810 : 1928 All. 21 : 25 Cr. L. J. 986.

—a M. held a preliminary inquiry in a case and ultimately discharged the accused. The case was found to be false. He then drew up a complaint under s. 476 and filed it on for disposal to another Magistrate as required by s. 476. 53 C. L. J. 1459.

—the wording of sec. 476 Cr. P. C. is wide enough to cover the consideration of other than strictly legal evidence in coming to the conclusion whether an order should be made under s. 476 for prosecution of a person and a prosecution can legally be directed upon evidence recorded in an investigation conducted under s. 202. A. I. R. 1924 Pat. 138 21 M. L. J. 795. *Ref.*

—under s. 476 the court may take action of its own notice. When the pleader merely brings the matter to the notice of the court he need not file a fresh vakalatnama. 34 C. W. N. 914 : 52 C. L. J. 87.

—it is the duty of every court to take action of its own motion in every apparent case of forgery or perjury which is committed. I. C. 45 : 23 Cr. L. J. 509.

—one under s. 471 I. P. C. cannot be avoided. P. C. 111 I. C. 433 : 29 C. W. N. 1030 : 2 Cr. L. J. 851, 84 Ind. C. 439 : 2 R. 374.

—sec. 476 applies only to offences referred to in sec. 195 when such offences are committed before the court which makes the order or are brought to its notice in a judicial proceeding. 9 C. W. N. 1030 : 2 Cr. L. J. 851, 84 Ind. C. 439 : 2 R. 374.

S. 476. Scope and applicability of the sec.—contd.

—to lodge a complaint under this sec. on mere suspicion is not in the interests of justice and expediency. 29 Cr. L. J. 534: 109 I. C. 358

—before proceedings under s. 476 can be instituted there must be direct evidence fixing the offence upon the persons whom it is sought to charge, e
by the M. or in the
arose 16 C. 730, 23 C
Q. W. N. 950: 18 Cr. L.

—a M. should record a finding that in the interest of justice it is necessary to make an enquiry under s. 476 Cr. P. C. 1928 Cal. 862: 113 I. C. 842. 30 Cr. L. J. 221.

—prosecution under s. 211 is not justified unless the complaint was intentionally false. 83 I. C. 701.

—this sec. does not apply to an offence under s. 188 I. P. C. 111 I. C. 461 29 Cr. L. J. 877: 29 Punj. L. R. 647. 10 Lah. 231: 1929 Lah. 378.

—both the sides cannot be alternatively proceeded against under this sec. 1905 P. L. R. 163. 3 Cr. L. J. 73, 23 A. 249

—an order under this sec. is a proceeding, a criminal proceeding. It is an order made by a Criminal Court. It directs the prosecution of a person after a judicial proceeding 34 C. 42. 11 C. W. N. 125 4 Cr. L. J. 460, 37 C. 52. 14 C. W. N. 132: 11 Cr. L. J. 45: 5 Ind. C. 62. *Contra*. below.

—a Civil Court acting under this sec. does not cease to be a Civil Court. The proceedings taken by the Court are of a civil nature although not covered by the C. P. C. 111 I. C. 595: 51 A. 344: 27 A. L. J. 55: 1929 All. 774.

—the effect of the addition. In sub-sec. (2) of this sec. of the words "and as if upon complaint made and recorded under sec. 200" and the addition to sec. 200 of the words "subject to the provisions of sec. 476" is that the order of the court under sub-sec. (1) is to be regarded as a complaint and is to be treated as having been recorded under sec. 200. 33 M. 48 F. & 26 A. 249 p. 262, 2 L. B. R. 234: 5 Cr. L. J. 123 F. & *contra*. 26 M. 93 F. &.

—the order of the court amounting to a complaint under s. 200 the complaining court must decide upon and name the witnesses to be examined by the M. otherwise the complaint is liable to be dismissed on the ground that there are no witnesses. 48 M. 395: 36 I. C. 449. 1925 Mad. 609: 26 Cr. L. J. 801

—this sec. is a self-contained sec. Sub sec. (1) gives the court power to put the law in motion and sub sec. (2) provides for the procedure to be followed when the law has been put in motion. An order under this sec. is not a complaint under sec. 195, but it is *also open to a court instead of following the procedure prescribed by sec. 476 to present a complaint like any other ordinary person before a M.* 32 M. 49 F. & 1 P. L. J. 298, 40 A. 116, 20 Cr. L. J. 426, 18 B. 581, 20 Cr. L. J. 630 (Pat.), 24 O. C. 367, 22 C. 1004, 1897 P. R. 12 *contra*. S. 476 is supplementary to sec. 195. 32 B. 184, 19 Cr. L.

S. 476. Scope and applicability of the sec.—contd.

J. 638 (c), 42 M. 540, 40 M. 100, 1920 P. L. R. 3, 15 M. 224. *But the intention of the legislature in amending the sec. is to make this sec. supplementary to s. 195.*

—the qualifications mentioned in Cl (b) of sec. 195 is to be treated as incorporated in the provision of sec. 476, therefore it was not competent to a S. J. to make an order under sec. 476 in respect of alleged offence of false information lodged at a Police Station. 10 C. L. J. 564; 14 C. W. N. 330; 11 Cr. L. J. 37, 7 C. L. J. 373; 12 C. W. N. 575; 7 Cr. L. J. 340 *fol.*, 18 B. 581, 22 C. 1004. *Commented upon and Dist.*

—a prosecution may be directed under s. 476 Cr. P. C. in respect of perjury alleged to have been committed in the course of judicial investigation following a Police Report, *above case* and 33 C. 1; 2 C. L. J. 228

—in cases of offence against the public justice the courts availed themselves more fully of the provisions of this sec. instead of leaving the prosecution to private parties who often use the sanction granted to them for the gratification of private ends, 26 B. 785.

—the distinction between s. 195 and s. 476 is (i) the order granting sanction under s. 195 is subject to an appeal while there is no appeal against an order under s. 476. 34 C. 561; 11 C. W. N. 568 F. B.; (ii) a sanction or complaint under s. 195 may be given or made at any time but an order under s. 476 should be made either at the close of the proceeding or so shortly thereafter as may be reasonably said that the order is part of the proceeding. 31 M. 140; 17 M. L. J. 584; 3 M. L. T. 79; 7 Cr. L. J. 54 F. B., 34 C. 551; 11 C. W. N. 568 F. B., 15 M. L. J. 489; 15 Cr. L. J. 118; (iii) the H. C. has power to revise the orders passed under s. 476 at least by Civil or Criminal Courts, but it has no power to reject or to direct the M. to reject a complaint made under s. 195, 32 M. 49.

—in an appeal from conviction the H. C. directed the S. J. to take action under s. 476 Cr. P. C.; held the S. J. should apply his mind in the matter on the merits and then only decide whether a prosecution was necessary or not. 83 I. C. 498; 26 Cr. L. J. 18

—this sec. does not apply to a Presidency M. 3 C. L. J. 357, 3 Cr. L. J. 329

Application of the sec. to persons other than parties to proceedings.

—a Court may make a complaint under s. 476 Cr. P. C. for an offence done by a person who was not a party to the proceeding before it, because an judicial proceeding. 52 C. L. J. 11). also against 510; 110 A. 24, 37 I. C.

S. 476. Scope and applicability of the sec.—*contd.*

487, 66 I. C. 63) *Rel on*, 1922 Lah. 401 *Dist.* (2 Rang. 374, 3 Rang. 49, 1928 Sind 69) *Diss. from*.

—there is nothing in a 476 Cr. P. C. to prevent the trial of an abettor of an offence committed by a party to a proceeding in Court without a complaint by the Court under that sec. 1928 Lah. 787 : 10 Lah. 442 : 30 Cr. L. J. 485 : 115 I. C. 529 : 30 Punj L. R. 517, (32 A. 74 : 12 Cr. L. J. 101, 1928 Lab 510) *fol* 12 Bom L. R. 383 *Diss. from*.

—when an offence of forgery is committed by more than one person one of whom at least is a party to the proceeding in which the document is produced, persons not parties to the proceeding can be prosecuted otherwise than under ss. 195 and 476 Cr. P. C. 23 L. W. 769.

Civil, Revenue or Criminal.

—a District Registrar holding a departmental inquiry is not "court" within the meaning of this sec. 9 C. W. N. 277, 10 C. W. N. 222 : 2 C. L. J. 619 : 3 Cr. L. J. 112, 11 C. L. J. 111, 18 A. 213, 20 C. 474.

—a Dt. Registrar is not a Civil, criminal or Revenue Court within the meaning of this sec. 89 I. C. 1050 : 26 Cr. L. J. 1482.

—an Income-tax Collector is not a "court" within the meaning of this sec. 8 Bom. L. R. 477 4 Cr. L. J. 34 *contra*. 44 P. R. Cr. 1905 : 187 P. R. 1905 : 3 Cr. L. J. 128

—a Collector or a Deputy Collector acting under the order of the Collector, in making an inquiry for determining who should be called upon to pay the stamp duty and penalty is not a "court" within the meaning of this sec. 7 C. W. N. 795.

—a Collector appraising crops under the B. T. act is a "court." 17 C. 872.

—a Settlement Officer commuting rent under sec.

the Public Demands

to the transfer of names
24 M. 121.

under this sec. 10 C. W.
Cr. L. J. 27, 10 Cr. L. J.

454.

—a Sub-divisional M. appointed as Collector within the meaning of a 58 B. T. Act may act under this sec. 17 C. W. N. 571 : 18 Ind. C. 191 : 40 C. 465 : 14 Cr. L. J. 139.

—election commissioners are not "Civil Court" within the sec. so a complaint by them under this section should be considered to be under s. 195 (i) (b) 47 A. 934 : 1925 All. 737 89 I. C. 630 : 1925 All. 737.

—a Tahsildar second class M. before whom a complaint of attempt to cheat is filed, can hold a judicial inquiry and if he finds a *prima facie* case, can direct prosecution for offences under ss 46 and 471 I. P. C. before a competent M. 81 I. C. 116 : 25 C. L. J. 628 1925 All. 99.

S. 476. Civil, Revenue or Criminal—contd.

—a High Court Judge sitting to exercise the revisional powers can lay a complaint under this section. 1925 Rang. 321: 3 Rang. 303 F. B.

—under the present amendment as there is no alternative but to prefer a complaint in writing and forward it to the M. of the first class having jurisdiction, it is inconsistent with the dignity of the H. C. Judge and a matter of apprehension to the accused. 1925 Lah 312: 26 Punj. L. R. 158: 6 Lah 34.

"Such Court . . . may make a complaint."

—the word "Court" in this sec. is to be understood as bearing its natural meaning with the sense of continuity, this implies notwithstanding any change of officers. 34 C. W. N. 914: 52 C. L. J. 87, 14 C. W. N. 799 Sp. B., 32 B. 184, 6 A. L. J. 392: 9 Cr. L. J. 219, 71 I. O. 596. 4 Lah. 58

—a successor in a court is the same court as his predecessor in that court but the predecessor who has departed to another court can no longer be held to be presiding officer of the first court. 22 A. L. J. 772. 82 I. C. 285: 25 Cr. L. J. 1277: 46 A. 851, 34 A. 398. Ref.

—the successor in office of a Dt. Judge may take action under this sec. in respect of false evidence given before the latter. 93 I. C. 991: 27 Cr. L. J. 527: 1926 Lah 394, 118 I. C. 112: 1929 Mad. 510: 30 Cr. L. J. 866: 1929 Cr. C. 11.

—from the use of the word "such court" in the sec. it is clear that the court empowered to take action under that sec. is the same court before which the offence has been committed or under whose notice the offence has been brought. 67 I. O. 723: 23 Cr. L. J. 451.

—the only court competent to act under this sec. is the Court before which the offence was committed or the court to which the offence has been transferred or
215, 1930 Mad.

—the Court trying a case is the proper authority to make a complaint under this section and not the Court before which the proceedings were originally instituted 53 C. 488: 30 C. W. N. 504: 1926 Cal. 788: 27 Cr. L. J. 648.

—the power to make complaint is not limited to the court taking cognizance of the original case but it extends to superior courts where the case has been transferred to a M. who has
33 C. W. N.
Cr. L. J. 430.
court and not

to the independent judicial officer who fills the judicial office at the time of original trial. 15 C. W. N. 691.

—an action can be taken by the successor of the Judge who tried the case on an application to initiate proceedings for offences falling under s. 195 Cr. P. C. 1925 Rang. 195: 85 I. C. 244: 26 Cr. L. J. 500.

S. 476. "Such Court .. may make a complaint."—*contd.*

—any Judge of the H. C. can dispose of an application under s. 476 whether the matter out of which the application arose was heard by him or by some other Judge. 49 B. 710 : 1925 Bom. L. R. 436 : 88 I. C. 709 : 26 Cr. L. J. 1189

—a person who has not appealed against an order resulting in a complaint under s. 476 Cr. P. C. cannot question before the Magistrate whether the complaint is a good one or made by a proper officer or so forth 49 C. L. J. 193 : 1929 Cal. 203 : 116 I. C. 632 : 30 Cr. L. J. 606

Old "Judicial proceeding," under the amendment "proceeding in court" : what is ?

"Proceeding in court"

—under s. 476 Cr. P. C. as amended, it is not essential that the proceeding in respect of which action is taken should be of a judicial character. 4 Pat. 24 : 6 Pat. L. T. 225 : 83 I. C. 730 : 26 Cr. L. J. 170.

—an order for sanction is bad so far as law where there is no judicial proceeding before the court as the offence must be one committed in or in relation to any proceeding in any court. Where on a complaint of theft the police inquired into the case and reported it to be false, a M. cannot direct prosecution under s. 476. 5 P. L. T. 300 : 2 P. L. R. 184 : 81 I. C. 153 : 25 Cr. L. J. 670, 20 C. W. N. 1265 : 2 Pat. L. T. 240 *Ref.*

—where it is possible that a certain person has forged a document but there is no evidence to suggest that he did so for the purpose of using it in court nor was it proved that he used the document in court, a complaint under s. 476 against him is not justified. 28 C. W. N. 880 : 81 I. C. 919 : 25 Cr. L. J. 1095.

—an application under s. 83 of the Tr. P. Act and a proceeding under that sec. on an application by a mortgagee is a proceeding in a court. An action can be taken under sec. 576 in respect of a forged document filed in such a proceeding. 83 I. C. 730.

—when after some rent suits were disposed of a petition was filed for the return of documents with a forged signature no prosecution could be had under s. 476 as after the rent suit had been disposed of the petition could not be said to be filed in the course of judicial proceeding 26 C. W. N. 669 : 71 I. C. 665 : 24 Cr. L. J. 202.

—where a forged document was filed in support of the defence but the court had to return the plaint to be presented to proper Court, held that the document was filed in a judicial proceeding so as to attract provisions of sec. 476 Cr. P. C. 49 Cr. L. J. 193 : 1929 Cal. 203 : 116 I. C. 632 : 30 Cr. L. J. 656

—proceedings before a Collector under s. 69 of the B. T. Act fall under this sec. 48 C. 1068.

—an appeal in a mutation case before the Commissioner is a proceeding in court. 6 P. L. J. 178

S. 476. "Proceeding in court"—contd.

—proceedings which are irregular or illegal or without jurisdiction are proceedings under this sec. and therefore no order for prosecution can be passed under this sec. 18 C. W. N. 95, 43 C. 173, 16 C. W. N. 885, *contra*. 1 P. L. J. 553.

—if a court is of opinion that there is ground for inquiry into an offence referred to in sec. 195 Cr. P. C. even if the case has passed out of the hands of that court and been decided by another court, the first court's power under this sec. does not come to an end 44 A. 642, 68 I. C. 827 : 23 Cr. L. J. 603.

—the trial of a suit after *ex parte* decree against the deft. is set aside, may be regarded as a continuation of the trial of the same suit which first ended in a decree for the plff. 18 L. W. 133, 32 M. 49, 42 M. 422 *Ref*.

—an inquiry made by the court into the conduct of the jury is a judicial inquiry. 31 C. W. N. 828 : 104 I. C. 111 : 1927 Cal. 628 : 28 Cr. L. J. 783.

—where the accused escaped from the custody of a peon of a civil court the proper procedure is that the servant of the court should file a complaint in the ordinary way. 86 I. C. 801 : 1925 All. 318 : 47 A. 409, 26 Cr. L. J. 865.

—a Chief Presidency M. making a complaint to himself under a 476 and then transferring the same to another M. for disposal does not act illegally. 30 C. W. N. 276, 43 C. L. J. 311 : 53 C. 350 : 1926 Cal. 470 : 27 Cr. L. J. 385 : 93 I. C. 33 F. B.

Judicial proceeding. (old)

—an execution proceeding is a "judicial proceeding" within the meaning of sec. 476, the definition in sec. 4 cl. (m) being clearly not exhaustive. 14 C. W. N. 799, Sp. B., 132 C. 367 : 9 C. W. N. 354, 11 C. 122, 11 C. 123 : 1 P. L. J. 553, 11 Cr. L. J. 90,

ng. 37 C. 53:

—a proceeding which is a judicial proceeding for one purpose
proceeding for another

One mode of making
872. So if a Settlement
y he is authorised to
t is a judicial enquiry.

cancelling a bond is
not a judicial proceeding. 37 C. 72 : 14 C. W. N. 306 : 1 Cr. C. L.
142, 34 C. 1 *Ref*.

—an enquiry without jurisdiction by a M. is not a judicial proceeding. 1899 A. W. N. 87.

—when a D. M. calls for record under sec. 435 Cr. P. C. his proceeding is not a judicial proceeding. 15 M. L. J. 419 : 3 Cr. L. J. 118 : 2 Weir 601, 31 M. 140 : 17 M. L. J. 584 : 3 M. L. T. 79 : 7 C. L. J. 54

S. 476. Judicial proceeding, (old).—*contd.*

—the words "brought under its notice in the course of judicial proceeding" are wide enough to cover an offence which may have been committed in another *forum* and on some previous occasion. 6 A. L. J. 392; 9 Cr. L. J. 219, *contra* 18 M. 487, 34 P. R. 1886, 12 W. R. Cr. 69; 4 B. L. R. A. Cr. 9, 2 Weir 598

—a D. M. referring a case to a Subordinate M. for enquiry and
 .. : : : s. 211 I. P. C., 27 C. 921,
 .. : : : subordinate M. making the
 .. : : : ler this sec. 32 C. 72, 16 M.
 .. : : : *infra* 8 Bom. L. R. 587; 4 Cr.
 R. J. 100.

—a M. making an inquiry before issue of an order under s. 144 acts in a stage of judicial proceeding. 19 M. 18.

—proceeding under the Land Acquisition Act held by the Deputy Collector is not a judicial proceeding. 27 C. 820, 7 C. W. N. 249.

—the court must initiate proceeding according to his own opinion and not on the opinion of his superior. 6 A. L. J. 924; 10 Cr. L. J. 525.

—petitioner lodged complaint with the Police which was found to be false, therefore the S. D. O. called upon him to prove his case and made over the case for disposal to another M. who made an order under s. 476, the order was held to be without jurisdiction 17 C. W. N. 824, 43 C. 175; 20 C. W. N. 63

—where in proceedings under s. 144 Cr. P. C. Deputy M. made some personal inquiries but did not keep any record of the evidence or allow any cross-examination, there is no judicial inquiry under s. 182 I. P. C. should
 C. 710; 24 Cr. L. J. 806.
 can be passed on the basis
 2 I. C. 1054; 24 Cr. L. J. 862.

—when the D. M. transferred the case to his own file and allowed the Public Prosecutor to withdraw the case and then held an inquiry, he had jurisdiction to make an order under s. 476 21 C. W. N. 755; 18 Cr. L. J. 10.

—the H. C. has jurisdiction under s. 476 to send the case of the trial of a prisoner at the
 C. for inquiry or trial to the
 the 1st class 43 C. 542, but

this case involving these offences was brought to notice in the
 .. whether they are committed
 .. ce in which this court is
 .. Cr. L. J. 142; 1 P. L. J.

586.

order for process to be issued this sec. on the opinion of the
 .. bad as the offence is not
 .. of judicial proceeding. 14 C.
 .. 9 C. W. N. 1030, 33 C. 30.

S. 476. Judicial proceeding, (old).—contd.

—a departmental inquiry by D. M. into the conduct of the Police, 25 M. 659, 38 A. 32; 13 A. L. J. 1050, or of the Sub-Registrar, 11 C. W. N. 111, or a preliminary inquiry by a Sub-Divisional M. at the direction of the D. M. into a complaint against the Police, 22 M. 882; or a departmental inquiry held by a Registrar touching

... 223 is not a judicial
the truth of certain
in a petition presented
to a Deputy Commissioner, is a judicial proceeding. 28 A. 89.

—the S. J. had no jurisdiction either under s. 195 or 476, to sanction the prosecution for an offence under s. 211 I. P. C. as the offence, if any, was committed before the Police and not before the court, 12 C. W. N. 575; 7 Cr. L. J. 340, 1890 A. W. N. 167, 43 C. 1152; 20 C. W. N. 1265; 18 Cr. L. J. 13

—neither the D. J. nor the H. C. had power to act under s. 476 directing the prosecution of the person against whom sanction was granted by a Small Cause Court Judge to a M. under sec. 195. 13 C. W. N. 1038; 10 Cr. L. J. 454; 1 Cr. C. L. 27.

—where in an appeal from a conviction the H. C. directed the S. J. to take action under s. 476, it was the duty of the S. J. to apply his mind to the matter on the merits and then only decide whether a prosecution was necessary or not. 21 A. L. J. 930; 83 I. C. 493; 26 Cr. L. J. 18; 1924 All. 453.

Time for making order under this sec.

—proceedings under this section should not be taken until the case in which the alleged false evidence was given has been disposed of. 89 I. C. 390; 1925 Nag. 412; 26 Cr. L. J. 1350.

—if a M. is inclined to take action against a witness the proper time would be at the time of delivering judgment in the case. 106 I. C. 456; 29 Cr. L. J. 40; 1928 Lah. 180.

—action under s. 476 should be prompt and expeditious. 14 C. W. N. 799 Sp. B., 34 C. 551; 11 C. W. N. 568 *considered*, so as to make it really the continuation of the original proceeding. 32 M. 49 F. B., 31 M. 140; 17 M. L. J. 584; 7 Cr. L. J. 54 F. B., 42 M. 422, 1930 Lah. 316; 1930 Cr. C. 348, 11 Cr. L. J. 20 *contra*, 32 B. 88, 184, 6 A. L. J. 392; 9 Cr. L. J. 219, 26 P. R. 1916; 18 Cr. L. J. 337, 7 S. L. R. 187; 15 Cr. L. J. 541; 24 Ind. C. 949, 43 B. 300

—where four months after a criminal trial had concluded the successor-in-office of the M. who had tried the case, upon an application made to him, made an order under sec. 476, directing the prosecution of a witness, the order was made without jurisdiction. 34 C. 551; 11 C. W. N. 568 F. B., 9 C. W. N. 859.

—it is the judge alone who tries the case who can summarily and at once, send the case for inquiry to the nearest M. above case.

—it is very desirable in the interest of justice that when a competent court has taken upon itself the responsibility of ordering a prosecution under s. 476, that prosecution should be entertained as speedily as possible while the evidence on both sides is fresh

S. 476. Preliminary inquiry and essentials of order—contd.
order under s. 476 Cr. P. C. 51 C. L. J. 45 : 1930 Cal. 282 : 1930 Cr. C. 362.

—it cannot be said that in every case it is prudent to hold a preliminary inquiry. When the offence is committed outside the court and not in the presence of the Judge the court should hold a preliminary inquiry. But where an offence is committed in the presence of the court, or from a proposal of the record the court is of opinion that it is necessary in the interests of justice that a further inquiry should be made in the criminal Court it may make a complaint to the nearest M 34 C W. N 914 52 C L. J. 87.

—the nature, method and extent of the preliminary inquiry are entirely at the discretion of the court. 97 I. C. 669 : 1926 Mad. 1008 : 27 Cr. L. J. 1149 : 51 M. L. J. 331, 1930 Cr. C. 859 (Cal), 1928 All. 21 Ref. (1925 Pat. 320, 43 Bom 300, 49 I. C. 917 Dist.) and it need not be of an exhaustive nature. 31 C. W. 828 : 104 I. C. 111 : 1927 Cal. 628.

—the successor of the officer is not bound to make an independent investigation before making an order under this sec. 15 C. W. N. 691.

—If an offence has been committed not in court but outside
execution of a judicial
to enable the court to
176, but it is not obligatory
B., 15 C. W. N. 691.

alleged to have been committed in the course of revenue or civil proceeding the facts constituting the offence should be determined in the Civil or Revenue court; the refusal to do it amounts to a denial of fair trial. 90 I. C. 443 : 26 Cr. L. J. 1565 : 1926 Pat. 25 : 7 Pat. L. T. 199.

—dismissal of complaint for non-prosecution does not bar a reopening of the matter and a fresh enquiry or there may be a second complaint 8 Pat. 736 : 1929 Pat. 212 : 11 Pat. L. T. 75 : 120 I. C. 629 : 31 Cr. L. J. 143.

—the preliminary inquiry, contemplated by this sec., need not extend to all the persons implicated in the offence 7 M. 224, 26 B. 785 : 4 Bom. L. R. 618

—the preliminary inquiry need not be conducted in presence of the accused, the court is simply to satisfy itself that there are *prima facie* grounds for sending the case for investigation to a M. 9 W. R. 3, 7 M. 224, 6 C. W. N. 298, 19 C. 345, 12 P. R. 1897, 97 I. C. 669 : 27 Cr. L. J. 1149 : 1926 Mad. 1008.

—the accused should not be subjected to any examination in the preliminary inquiry. 2 Weir 598

—opportunity should be given to the accused to show cause. 2 Weir 587, 7 M. 189, and notice should be given to the accused though it is not a matter of strict law. 49 B. 710 : 1925 Bom. 436 : 88 I. C. 709.

—when the incident takes place outside the court preliminary inquiry is necessary. 21 C. W. N. 125 : 18 Cr. L. J. 117.

S. 476. Preliminary inquiry and essentials of order—contd.

—requirements of this section are not satisfied by recording a finding of two alternative but inconsistent offences. 104 I. C. 904 : 28 Cr. L. J. 888 : 1927 All. 567.

—the words "expedient in the interest of justice" need not appear in every order made under s. 476. 1930 Lab. 347 : 1930 Cr. C. 395:

but where there was no express finding by the Court of appeal that a complaint of sanction was

When order under this sec. should be made and when not.

—sec. 476 has to be read with sec. 195 and is therefore restricted by Cl. (b) of that sec. An order under sec. 476 cannot therefore be made for alleged perjury during police investigation, 14 C. W. N. 330 : 10 C. L. J. 564 : 11 Cr. L. J. 37 : 1 Cr. C. L. 105, 7 C. L. J. 373 fol. (18 B. 541. 22 C 1004) commented and Dist. but a prosecution may be directed under this sec in respect of perjury alleged to have been committed in the course of judicial investigation following a police report, above case and 33 C. 1 : 2 C. L. J. 228. But see below.

—this sec. is self-contained. Sub-sec (1) gives the court power to be exercised in order to be exercised open to a court under sec. 476 to prevent before a M. 32 P. 6, 18 B. 581, 20 P. R. 12, contra. Cr. L. J. 638 (c) 224, 14 C. W. N. 330 : 10 C. L. J. 564 : 11 Cr. L. J. 37, 1 C. L. J. 373 fol. But the intention of the Legislature in amending the sec. is to make this sec supplementary to s. 195.

—provision has been made in this sec. for the initiation by courts of proceedings against persons who are not parties for offences referred to in s. 195. 105 I. C. 802 : 28 Cr. L. J. 978, 1928 Lab. 510 : 110 I. C. 108 : 29 Cr. L. J. 652, 40 C. 24, 37 I. C. 487, 66 I. C. 68.

—no sanction should be granted unless there is a reasonable probability of conviction. above case and 1 C. 450, 12 C. W. N. 3, 105 I. C. 831 : 1927 Mad. 996 : 39 M. L. T. 414, 100 I. C. 373 : 1927 Lab. 352 : 28 Cr. L. J. 293.

—before making an order directing prosecution of any person direct evidence fixing the offence to charge. Evidence in the suspicion of guilt of an offence Cr. L. J. 407.

S. 476. When order under this sec. should be made and when not—*confd.*

—it is not in every case that a Magistrate considers to be under sec. 211 I. P. C. 11

justified unless the complaint

—prosecution should not be started for forgery or perjury before the close of the case, 3 C. L. J. 302; 3 Cr. L. J. 303, 18 C. W. N. 1342, 16 B. 729 or of appeal, 6 C. 308, 5 W. R. 24, 23 C. 532 610, 20 C. 349, 13 B. 109, 16 B. 729, 188. 581, 13 M. 144, 21 M. 124, 16 A. 80.

—if a false statement is clearly immaterial and nothing hinges on it then the witness making it should not be proceeded against under this sec. 1927 Cal. 515; 100 I. C. 534; 28 Cr. L. J. 310.

—mere existence of contradictions in the evidence of a witness is not sufficient for making an inquiry in the interests of justice, 1928 Cal. 862; 113 I. C. 842; 30 Cr. L. J. 221.

ty of the court to his contradictory ry is not always ice of the court it should be adequately dealt with. 33 C. W. N. 664; 1929 Cal. 390; 1929 Cr. C. 26; 122 I. C. 209; 31 Cr. L. J. 373.

—where the complaint is under a 476 Cr. P. C. for an offence a witness and the evidence : : complaint is not unsustainable orgerly also. 1929 Mad. 74; 30 Cr. L. J. 370; 114 I. C. 834; 28 L. W. 774.

forged document in the prosecution for offence with in the absence of complaint 30 C. 1041; 33 C. W. N. 474; 1929 Cr. C. 401; 1929 Cal. 633.

—a prosecution under sec. 476, for an offence under sec. 193 I. P. C. must be stopped as soon as the judgment which is the basis of the prosecution is reversed on appeal. 12 C. W. N. 1-6 C. L. J. 703.

prosecution for any 36 covers forgery for 14 C. W. N. 479;

—sanction under s. 195 is no bar to a sanction under this sec. 13 B. 384, 34 B. 88, 29 M. 331, 31 M. 140, 32 M. 49.

—as no oath can be administered to an accused, an affidavit sworn by him cannot be the subject of prosecution. 3 A. L. J. 98, 19 A. 200.

—It is not customary to prosecute under this section in matters of oath against oath which is a question of public policy rather than of law. 105 I. C. 831; 1927 Mad. 996; 39 M. L. T. 414.

S. 476. When order under this sec. should be made and when not—*contd.*

—the Cr. F. C. provides for taking cognizance of offences and not of offenders and a M. legally taking cognizance of an offence on an order under s. 476 has jurisdiction to proceed against any one who may be proved by evidence to be concerned in the offence whether he was mentioned in the order under s. 476 or not. 21 C. W. N. 950; 18 Cr. L. J. 901.

—a. 225-B. I. P. C. is not one of the offences mentioned in sec. 195 Cr. P. C. 21 C. W. N. 125; 18 Cr. L. J. 117.

—where the court drew up a proceeding against a person present in court for the non-production of document in his possession it was held that before any proceedings could be taken, it would be necessary to determine whether the document in question was one which he could be compelled to produce and if the requirements of ss. 130 and 131 Evi. Act were fulfilled 14 C. L. J. 120; 11 Ind. C. 794; 12 Cr. L. J. 450, 40 C. 477; 17 C. L. J. 245; 17 C. W. N. 647, 14 Cr. L. J. 197; 19 Ind. C. 197 *Ref*

—when a subordinate court has not made a complaint nor has rejected an application, the superior court can take action, but unless the former has refused to take action remedy lies in appeal within 30 days. 42 C. L. J. 120

—the fact that a complainant fails to prove his case is not sufficient to sanction a prosecution under s. 211 I. P. C. The Judge or M. must be satisfied that the complaint was made with intent to cause injury or that it was a false complaint made with the knowledge that it was false. 6 Pat. L. T. 365; 83 I. C. 701; 26 Cr. L. J. 141.

—the wording of s. 476 is wide enough to cover the consideration of other than strictly legal evidence in coming to the conclusion whether an order should be made under s. 476 for prosecution of a person and a prosecution can legally be directed upon evidence recorded in an investigation conducted under sec 202. A. I. R. 1924 Pat. 138, 21 M. L. J. 795.

—an order under a. 476 Cr. P. C. can be passed on the basis of evidence recorded under s. 202 (2). 74 I. C. 1054; 24 Cr. L. J. 862.

—it is no use passing an order under a. 476 Cr. P. C. unless there is a reasonable probability of conviction. 74 I. C. 855; 24 Cr. L. J. 823.

"In relation to a proceeding"

—if two offences are even remotely connected by the relationship of cause and effect one may be said to be committed in relation to the other. The words "in relation to" in the section are sufficiently wide to cover a case whereon offence was actually committed before the proceedings began in the complaining court; therefore, a false charge to the police is obviously a matter related to the proceedings in the S. O. for it is the basis of such proceedings. 100 I. C. 708; 1927 Cal 478; 28 Cr. L. J. 324.

S. 476. Revision.

—a S. J. has no jurisdiction to revise an order of a M. passed under s. 476. It is only the H. C. which has power to revise such order under sec. 439 Cr. P. C., or under the general powers of superintendence. 11 C. W. N. 123; 34 C. 42, 33 M. 48 F. B., 21 M. 124 F. B., 26 B. 745; 4 Bom. L. R. 618, 23 A. 249, 26 A. 249, 1908, A. W. N. 27; 4 A. L. J. 803; 7 Cr. L. J. 1, 1907, 4 B. R. Cr. 1; 6 Cr. L. J. 25, 16 C. 740, 20 C. 349, 23 C. 610. (26 M. 98 F. B., *overruled* by 33 M. 48 F. B.) 9 N. L. R. 184; 15 Cr. L. J. 33; 22 Ind. C. 177, *Contr.* 97 I. P. 650; 27 Cr. L. J. 1130.

—but a Criminal Bench of the H. C. cannot revise under s. 439 the proceeding of a civil court under this sec. 2 C. W. N. 73, 26 M. 139, 23 C. 532, 30 W. N. 307, 26 A. 249, 28 A. 554, F. B. (26 A. *overruled*), 30 M. 311, 35 C. 909, 31 M. 510, or of a Revenue Court, 4 A. L. J. 701; 1907 A. W. N. 277; 6 Cr. L. J. 35, 1902 A. W. N. 262, 10 Cr. L. J. 395; 3 S. L. R. 66.

—in the case of an order passed under s. 476 by a Civil or Rev. J. the H. C. can exercise the P. C. or under s. 15 of the Cr. L. J. 191; 40 C. 417, 1. C.

—the H. C. must have regard to the nature of the revisional jurisdiction and must not in a case arising under s. 476 any more than in any other case allow what would virtually be an appeal from the court below. 33 C. 909, 23 A. 249.

—a Judge of the H. C. can dispose of an application under s. 476 whether the matter out of which the action arose was heard by him or by some other Judge. 29 Bom. L. R. 616.

—in cases of revision against order under s. 476 Cr. P. C. the H. C. must satisfy itself that there has been no unreasonable delay, that the orders are not vexatious and that the charges are not of a flimsy nature. 44 A. 642; 20 A. L. J. 666; 68 I. C. 827; 23 Cr. L. J. 603.

—a Dt. M. has no power to interfere with orders under s. 476 passed by subordinates Ms., but it is otherwise if the order is passed under s. 195. 73 I. C. 690; 24 Cr. L. J. 658; 1923 A. 597.

—a revision under s. 476 Cr. P. C. is maintainable against an order made by a Magistrate. 49 A. 296; 24 Cr. L. J. 296.

Appeal.

—there would lie an appeal from the Dt. J. to the H. C. upon a proper construction of ss. 476, 476-A and 476-B. 94 I. C. 593; 1926 Pat. 81; 27 Cr. L. J. 641; 5 Pat. 262; 7 Pat. L. T. 114.

—the amended section provides an appeal both against a complaint made under this section as well as against an order refusing to lay a complaint. 92 I. C. 456; 1926 Mad. 233; 27 Cr. L. J. 280.

—where on the refusal of the third class M. to make a complaint under s. 476 Cr. P. C. an appeal was preferred to the

S. 476. Appeal—*contd.*

to be lodged but the
 lered in appeal that a
 d that though the Dy.
 M. was empowered under s. 204 (a) to hear an appeal he was not an
 ordinary court of appeal; consequently the later order was without
 jurisdiction. 56 C. 824; 33 C. W. N. 285; 49 C. L. J. 342; 1929 Cal.
 172; 30 Cr. L. J. 658; 116 I. C. 638.

—an order of the Court of Small Causes under s. 476 directing
 that a complaint under ss. 193 and 196 I. P. C. be filed, is appealable
 by the H. C. on its Appellate Side. 48 M. 395; 86 I. C. 449; 1925
 Mad. 609; 26 Cr. L. J. 801.

—if a *prima facie* case is made out the Appellate Court should
 not interfere. 1925 Pat. 677; 4 Pat. 484.

—the Court to which a sanction appeal is transferred is
 clothed with all the powers of original Appellate Court. 86 I. C.
 428; 1925 Nag 358; 26 Cr. L. J. 796.

**S. 476-A. (Superior court may complain where subordi-
 nate court has omitted to do so.)**

—s. 476 A was never intended to apply to a case of a court
 not invoking a power which it had no power to invoke. 88 I. C.
 357; 26 Cr. L. J. 1125; 1925 Mad 1181.

—when a subordinaata court has not made a complaint nor
 has rejected an application the superior court can take action, but
 unless the former has refused to take action, remedy lies in appeal

means rejected after con-
 e the lower court allowed
 consideration on the merits,
 "rejected." 1929 Sind 50;
 37.

498 I. P. C. failed before
 an appeal would ordinarily
 lie took up the matter under sec 476 Cr. P. C. and ordered the
 33 I. P. C. and on appeal the
 o revision under sec. 476 A.
 ke up the matter and order
 710; 26 Cr. L. J. 566; 1925

All. 410.

—where on an appeal the Sessions Court finds the complaint
 as illegal, that court has power to make a complaint of its own
 initiation. L. R. 6 All 79 Cr., 86 I. C. 987; 1925 All. 667; 26 Cr. L. J.
 923.

—where in appeal the Sessions Judge substituted the state-
 ment in para 8 in place of the statement in para 2 of an affidavit by
 way of correction of a mistake committed by the Dt. M. held that
 technically speaking the Judge had the power to set aside the lower
 court's order and direct prosecution for a different offence and con-
 sequently the prosecution was not vitiated. 1928 All. 706; 111 I. C.
 122; 29 Cr. L. J. 794.

S. 476-A. (Superior court may complain where subordinate court has omitted to do an—*confd.*)

—ship committed by a M. in a complaint for perjury in respect of a statement in one paragraph—power of appellate court to substitute a different statement as the basis of the offence by way of correction. 1929 Mad 74: 30 Cr. L. J. 370: 114 I. C. 834.

—the tendency of an application for sanction before the inferior court does not prevent superior court from granting the sanction under s. 476 A, as the tendency of the application cannot mean rejection of the application. 26 Bom. L. R. 713: 82 I. C. 359: 25 Cr. L. J. 157. 1924 Bom 511.

—from an order under s. 476-A passed by a Dt. Magistrate an appeal under s. 476-B lies to the court of Sessions Judge. 1929 Nag 97: 25 N. L. R. 1: 116 I. C. 77. 30 Cr. L. J. 550.

—where the S. J. preferred a complaint to the Dt. M. and the Dt. M. convicted the accused the S. J. could not hear appeal against the conviction and order retrial. 1927 Lab. 671: 8 Lah. 496: 106 I. C. 342: 29 Cr. L. J. 6. 28 Punj L. R. 633.

S. 476-B. (Appeal).

—the words "or against whom such a complaint has been made" mean that the right of appeal is given to any person against whom a complaint has actually been made. The nature of the complaint is defined by the word "such" which relates back to the words "complaint under a 476 or 476 A." 1929 Lab. 641: 30 Cr. L. J. 1019: 119 I. C. 265: 1929 Cr. C. 205.

—an appeal under s. 476 B lies even when action under s. 476 is taken by the court *suo motu* and not on the complaint of a private person. 1929 All. 899: 1929 Cr. C. 491: 120 I. C. 113: 1930 A. L. J. 203, 31 Punj L. R. 153: 12 Lah. L. J. 29, 11 Lah. 55 *fol.*, 1929 Lah. 9 *Dis. from*

—the words "such a complaint" in a 476-B. mean a complaint made on application and not a complaint made by a M. at his own instance. 1929 Lah 9: 30 Cr. L. J. 163: 113 I. C. 537, *but see the above cases*, and 1927 Lah. 54.

—the words "if it makes such complaint the provisions of that section shall apply accordingly" refer to the procedure prescribed in sec. 476 for filing of such complaints and not to the act of making the complaint. 1929 Nag. 281: 1929 Cr. C. 458: 25 N. L. R. 192: 119 I. C. 703.

—the policy of law under this section is that whenever there is a decision by a court upon an application that a complaint shall be made there is one appeal from it and no more than one appeal. 32 C. W. N. 164: 106 I. C. 711: 55 C. 765: 29 Cr. L. J. 119: 1928 Cal 281.

—where the discretion exercised by a trying M. is exercised in refusing to make an order under s. 476, and a superior court reverses the order of that court, sufficient reasons must be given by the superior court as to why it thinks that the discretion was not properly exercised. 52 C. 478: 89 I. C. 251: 1925 Cal. 721: Cr. L. J. 1307.

S. 476-B. (Appeal)—*contd.*

—s. 478 Cr. P. C. has no application to proceedings under s. 476-B, so a Dt. Judge cannot take additional evidence in a matter under s. 476-B. 1928 M. W. N. 73; 27 L. W. 265; 51 M. 603; 55 M. L. J. 218; 29 Cr. L. J. 445; 108 I. C. 638; 1928 Mad. 391.

—in dealing with an appeal under this sec. the procedure prescribed in Or 41 C. P. C. should be followed. 1929 Cal. 428; 49 C. L. J. 374; 1929 Cr. C. 54.

—s. 476-B, gives a right of appeal only when a court has made or refused to make a complaint under s. 476-A, but not when a complaint is made by a court on appeal from an order of a subordinate court refusing to complain. 26 Punj. L. R. 199; 1925 Lah. 322; 88 I. C. 528; 26 Cr. L. J. 1168.

—in appeals under s. 476-B the appellate court should reconsider the entire matter on its merits. Where the Judge pointed out that two distinct views could be taken but disposed of the appeal by endorsing the views of the lower court without specifying his own views of the facts there was no proper disposal and it could be interfered in revision. 57 C. 500.

—an appeal under this sec. is subject to all the provisions applicable to criminal appeals as laid in s. 419 and the following secs. and such an appeal can be disposed of summarily by the Dt. M. 34 C. W. N. 923.

—an appeal preferred under s. 476 B. against the order of the Dt. Munsiff may be transferred by the Dt. Judge to the Additional Dt. Judge who can hear the appeal and prefer a complaint. 34 C. W. N. 80; 1930 Cal. 361; 1930 Cr. C. 537.

—before disposing of an appeal under s. 476 B the Dt. Judge should issue notice to the parties, examine the record and come to an independent conclusion. 51 C. L. J. 45; 1930 Cal. 282; 1930 Cr. C. 362.

—when an order is passed under s. 476-B the H. C. can interfere with the same if it falls within one of the grounds mentioned in s. 115 C. P. C. 34 C. W. N. 914; 52 C. L. J. 87.

—in an appeal against a refusal to make a complaint notice is to be given to the accused; but in case of appeal by person against whom a complaint is made the opposite party is the Crown to whom alone notice is to be served. 29 Punj. L. R. 128; 106 I. C. 581; 29 Cr. L. J. 72.

—in case of appeal under s. 476-B, the appellate Court should reconsider the entire matter on the merits and should allow or dismiss the appeal as it thinks fit. 88 I. C. 35; 1930 Cal. 428; 1930 Cr. C. 54; 1930 Cr. L. J. 374; 1930 Cr. C. 54.

—s. 476-B sanctions a provision that a M. having jurisdiction that the lower court has no jurisdiction to make a complaint under s. 476-A. 1926 All. 402; 27 Cr. L. J. 1168.

—where an order is made under s. 476 Cr. P. C. by a Munsiff and an appeal against the order will lie under this sec. to the Dt. Judge.

S. 476-B (Appeals)—contd

superior to him and will be governed by the provision of the C. P. C. 53 C 817 : 99 I C 124 : 1927 Cal 94 : 24 Cr. L. J. 920

—where under the notification by the H. C. with the previous sanction of the Local Govt. appeals lying from Munsiff's decrees are preferred to the subordinate Judge the latter court is the appellate court under a 193 (2) Cr. P. C. and it is that subcourt that can make a complaint under a 476-B : 8 Pat. 429 : 1929 Pat. 367 : 4 Cr. L. J. 834 : 1929 Cr. C. 158 : 117 I. C. 878

—a Deputy Magistrate invested with the powers under a. 47 : 2 Cr. P. C. has no jurisdiction to hear appeals under a. 476-B from the orders of the Subordinate Magistrate. 56 C. 824 : 1929 Cal 172 : 33 C. W. N. 285 : 116 I. C. 633 : 30 Cr. L. J. 658 : 49 C. L. J. 342 : 30 C. 39b, fol

—from an order made by a single Judge on the Original Side of the H. C. granting or refusing sanction to prosecute an appeal under a 476-B lies to the Division Bench. 56 Cal 932 : 33 C. W. N. 329 : 1929 Cal 521 : 30 Cr. L. J. 974 : 1929 Cr. C. 184.

—where an application to make a complaint has been dismissed by the trial court and the applicant dies, his legal representative cannot prefer an appeal under a 476-B. L. R. 6 All. 85 Cr., 87 I. C. 608 : 1925 All. 620 : 26 Cr. L. J. 1008.

—the court to which a sanction appeal is transferred is clothed with all the powers which the original court of appeal has under the Code. 86 I. C. 428 : 26 Cr. L. J. 796.

—a court proceeding under a. 476-B should, if it quashes the order directing prosecution, direct the withdrawal of the complaint; it is action granted by the trial court 26 Bom. L. R. 289 : 25 Cr. L. J.

—where an appeal was taken to the Dt. Judge from the order of the subordinate judge directing prosecution of the accused under a. 476 the order of the Dt. Judge directing the lower Court to submit a fresh complaint in the light of certain observations was not valid in law, *Per Chotzner J.* An appeal under this section must be dealt with as an ordinary appeal under a. 424 Cr. P. C. and

can it be summarily dealt with sec. must be treated

. 41 C. P. C. and not Sa. 3 : 31 C. W. N. 281 : 1927

—where on appeal under a. 476 against the refusal of the Subordinate Judge to file a complaint the Dt. Judge directed the Subordinate Judge to file a complaint as the Dt. Judge 55 C. 1277 : 1929

order of the Munsiff but pointing out the desirability of having it properly worded not an order of remand and even if it be so the proper course object to the same immediately by filing a revision under a

S. 476-B. (Appeal)—*contd.*

P. C. and not to raise objection after the Munsiff has preferred complaint and the matter has been tried. 1929 Cal. 428 : 49 C. L. J. 374 : 1929 Cr. O. 54.

—no appeal lies under the provisions of the Cr. P. C., against an order made by the court to which the court making a complaint under s. 476 is subordinate. 54 C. 355. 31 C. W. N. 281 : 1927 Cal. 284 : 101 I. C. 351.

—where a lower appellate court withdraws a complaint made under s. 476 the H. C. will not ordinarily interfere in revision. *above case*

—an appellate order of the Dt. Judge making complaint under s. 476 B is not subject to second appeal, only one appeal being allowed. 51 M. 777 : 111 I. C. 114 : 29 Cr. L. J. 786 : 1928 Mad. 506 : 55 M. L. J. 444, 1925 Lah. 322 : 1924 Bom. 347, *approved*. 1926 Pat. 8 *Diss.*, but the Allahabad H. C. has held that if the appellate court makes the complaint without the intervention of the trial court an appeal lies to the H. C. 1929 All. 898 : 1929 Cr. O. 490., so also the Patna H. C. in 5 Pat. 262 : 1926 Pat. 81 but it has been doubted in 8 Pat. 428 : 1929 Pat. 367 : 117 I. C. 878 : 30 Cr. L. J. 834 : 1929 Cr. C. 158

—where the munsiff rejected an application under s. 476 Cr. P. C. for the prosecution of a person under s. 195 (C), Cr. P. C. on the ground of want of jurisdiction, held that the Dt. Judge, on appeal, should first determine whether the munsiff had jurisdiction to entertain the application and that no appeal was maintainable before the H. C. *above case* the Dt. Judge but the H. C. Judge in the exercise of its P. C. 55 O. 836 : 47 C. L. J. 109 I. C. 211.

—the policy of the law as laid down in s. 476-B is that whatever may be the result of the order of the first appellate court no second appeal to the H. C. lies 55 C. 765 : 32 C. W. N. 164 : 106 I. C. 711 : 29 Cr. L. J. 119 : 1928 Cal. 281, 5 Pat. 262 *not fol.*, 1925 Lah. 322, 1924 Bom. 347, 1927 Rang. 313, 1929 Nag. 281 : 119 I. C. 703 : 1929 Cr. O. 448.

—no appeal lies to the H. C. from the order of an appellate M. under s. 476 B (2). An appellate order may be interfered with in revision when it is brought to the notice of the H. C. after the commencement of the trial. 56 C. 824 : 23 C. W. N. 285 : 49 C. L. J. 342 : 116 I. C. 638 : 1929 Cal. 172 : 30 Cr. L. J. 658.

—no appeal under s. 476 B unless 98 I. C. 111 : 1927 Pat. 87 : 105 I. C. 457 : 1927 Rang. 313 : 20 Cr. L. J. 209.

—refusal of trial Judge to file complaint—appeal to the Dt. Judge after the expiry of 30 days. L. Act, Art. 154, applicability of, 29 C. W. N. 1035 : 90 I. C. 529 : 42 C. L. J. 120 : 52 C. 1003 : 1925 Cal. 1228.

S. 476-B. (Appeal)—contd

—the period of limitation for an appeal from an order making complaint commences from the date of filing the complaint and not from the date on which it is signed. 105 I. C. 341; 29 Cr. L. J. 72; 25 Punj L. R. 124.

—the order contemplated by Art. 151 Limitation Act is the finding that is recorded under s. 476 Cr. P. C. hence the time for appeal begins to run from the time the finding is recorded or is supplemented by an actual complaint. 32 B. 161; 1924 Bom. G. 108 I. C. 25; 29 Cr. L. J. 315; 30 Bom. L. R. 76.

—for the purposes of appeal limitation runs from the date of making of the complaint. 36 C. 932; 33 C. W. N. 329; 114 I. C. 859; 1929 Cal 521; 1929 Cr. C. 184; 30 Cr. L. J. 974.

S. 478. (Power of Civil and Revenue Courts to complete inquiry and commit to H. C. or Court of S).

—where the court elects to commit the accused itself, the procedure as to preliminary inquiry into cases triable by a S. C. (Chap XVIII) must be strictly followed. 4 M. 227, 2 Weir 583.

—the Munsiff must conform substantially to the provisions of Chap XVIII 40 A. 32.

—sanction given to private person is no bar to proceed under this sec. 13 B. 344, 34 B. 83, 29 M. 331.

—a commitment to the Court of Session by a Munsiff is valid. 22 C. 1094.

—where a court neglected to follow the direction contained in the second sub-section and framed no charge and made merely an inquiry of a very perfunctory character the whole proceedings were irregular. 77 I. C. 833; 25 Cr. L. J. 483. 40 A. 31 fol.

—there is no right of appeal against an order under s. 478 Cr. P. C. 103 I. C. 204; 1927 All. 571; 23 Cr. L. J. 663; 25 A. I. J. 555.

S. 480. (Procedure in certain cases of contempt).

—the procedure laid down in this sec. should be strictly followed and the provisions should be applied then and there. 11 A. 361, 3 A. 62.

—s. 482 need not be read with this sec. and does not require the M. to draw up proceedings on the same day that the offence is committed. 35 C. 161, 16 P. R. 1897.

—where the proceedings commenced with the words "particulars" but those particulars were not showed otherwise, the
328 Rang. 280; 113 I. C. 278

S. 480. (Procedure in certain cases of contempt)—*contd.*

—the jurisdiction of the court is criminal and not civil even though the attack has been made in connection with civil suits or appeals. 45 C. 169; 21 C. W. N. 1161; 19 Cr. L. J. 530.

—scandalising courts, and attempting to prejudice litigants and interfering with due course of justice is contempt of court. Printer and Publisher of a Newspaper are liable even if they are not aware of the subject constituting such contempt. *above case* and 26 C. L. J. 345.

—a contempt of inferior court is not necessarily a contempt of H. C. 17 C. W. N. 1253; 18 C. L. J. 452

—the power to commit for contempt by summary proceeding being an arbitrary, unlimited and uncontrolled power, should be exercised sparingly and not for a technical contempt *above case*.

—a court of record has power to punish, by commitment for contempt, a libel published while the court is not sitting 26 C. L. J. 345.

—whether a libel be public or private, the only method is to
it is a

its object
It is for
y taken
result of

the cause, has been deemed contempt. *above case*.

ranny for the mode
before him, or to
is under considera-
is course, is a grave

* contempt of court. *above case*.

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—the H. C. has got greater powers to punish for contempts committed out of court *e.g.* comments in newspapers on proceeding pending in the H. C. 10 C. 109 P. C., 15 C. W. N. 771, 14 Bom. L. R. 23.

—but the H. C. cannot punish for contempts of subordinate courts. 41 C. 173; 17 C. W. N. 1285, *contra*. 24 Bom. L. R. 16; 21 M. L. J. 832, F. B.

—the sec. does not apply to Village Munsiffs. 15 M. 131.

—unless the Local Govt. so directs a Sub-Registrar is not a Civil Court within the meaning of ss. 480 and 482 Cr. P. C. and an offence under s. 228 I. P. C. committed before him cannot be dealt

S. 480. (Procedure in certain cases of contempt)—contd.

with under ss. 480 and 482 Cr. P. C. 31 C. W. N. 56. 1930 Cal. 366 : 1930 Cr. C. 542.

—In a contempt proceeding, there are two modes of proceeding open to H. C. one by rule calling upon the person to show cause, the other by attachment 26 C. L. J. 345.

—any fair criticism is justifiable and is not a contempt if expressed in good faith. An expression of opinion in good faith is criticism, but false statements published in newspapers are not fair criticism. Advertisement for a demonstration against a Judge for acts done in court, is a contempt 26 C. L. J. 401.

—a person cannot be convicted under this sec. for walking with creaking shoes near the court room. 5 M. L. T. 286 : 9 Cr. L. J. 309.

—prevarication by a witness may, though not necessarily, amount to contempt of court 10 B. H. C. R. 69 : 15 W. R. Cr. 5

—where a witness on being asked his grandfather's name replied that he did not remember it, it did not amount to a refusal to answer a question and he could not be punished under s. 480 Cr. P. C. 921 C. 428. 1926 Lah. 240. 27 Cr. L. J. 252.

—putting irrelevant question to a witness does not amount to contempt under s. 228 I. P. C. but persistence in vexatious or irrelevant questions, after warning, may amount to a contempt. 44 P. R. 1867.

—but the insisting of the pleaders on questions being taken down or objection noted is not contempt. 6 Bom. L. R. 541.

—application of transfer, on the ground of probable miscarriage of justice, is not a contempt 34 P. R. 1869 1898, A. W. N. 145.

S. 481. (Record in such cases).

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—where the record does not contain the provisions of sec. 481, the order is void. 1928 Lah.

In this sec. is
der. L. B. R.

1893—1900, 20.

—no person can be punished for contempt of court which is a criminal offence unless the specific offence charged against him be distinctly stated and an opportunity given him to answer. The omission to record the statement of a legal practitioner charged for contempt is a fatal defect to the prosecution. 37 C. L. J. 535 : 751 C. 542 : 24 Cr. L. J. 798

—the order of the M. falls short of the requirements of s. 481 if it does not contain the statement made by the petitioner. 1923 Lah. 88.

—where the intention to insult or cause interruption to the M. was not made out nor the explanation of the accused was set

S. 481. (Record in such cases)—contd.

in the order the conviction under s. 228 I. P. C.¹ was set aside. 25 Cr. L. J. 588.

—the H. C. may interfere if the terms of the sec. are not complied with. 4 M. H. C. R. 229, 2 Lah. 308.

S. 482. (Procedure where case should not be dealt with under s. 480).

—this sec. distinctly contemplates that the trial is to be by a judicial officer other than the person before whom the contempt was committed. 12 W. R. Cr. 18 p. 21.

—a court acting under this sec. is not bound to take proceedings on the same day, as in the case under s. 480. 35 C. 161.

S. 485. (Imprisonment or committal of person refusing to answer or produce document).

—complainant is not a witness. 13 B. 600.

—a witness is not bound to answer irrelevant question, 13 B. 600 or question asked with a view to start a criminal proceeding against him. 10 B. 185.

—when proceedings are not taken then and there this sec. does not apply and s. 487 bars a trial by the M. 13 M. 424.

S. 487. (Certain Judges or Ms. not to try offences referred to in sec. 195 when committed before themselves)

N.B.—s. 477 has been omitted from this sec. by the amendment.

—the words Judge of criminal court do not include a judge of a civil court or D. J. 16 C. 766 F. B., 18 B. 380 F. B., 7 C. W. N. 708.

—the terms of this sec. are not wide enough to include a Presidency M. 12 C. W. N. 246; 7 C. L. J. 70; 7 Cr. L. J. 103.

—a M. acting in different capacity is not excluded. 18 B. 380 F. B., but see 2 A. 405, 14 A. 354, 13 M. 24.

—a M. who has refused to set aside an order sanctioning a prosecution on a charge of perjury, has no jurisdiction under this sec. to try the case himself. 20 M. 383.

—the words "in contempt of authority" are general and are not to be construed as limited to cases where the alleged offence is

who had confirmed a sanction for prosecution from hearing the appeal of the accused from his conviction. 81 I. C. 201; 25 Cr. L. J. 718; 1914 Rang. 51.

—a Presidency M. is included in the section. 12 C. W. N. 246.

—a M. cannot try for disobedience of an order passed by itself. 23 C. W. N. 520, 29 C. L. J. 382, 51 I. C. 845

dition and procedure.—contd.

e respondent in a proceeding under s. 488 Cr. P. C.
insane, the M. has no power to appoint a
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M. 393; 26 Cr. L. J. 701; 86 I. C. 77; 1925

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f, he cannot afterwards object that the trial is
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nj. L. R. 549 : 10 Lah. 406 : 112 I. C. 218 : 29 Cr.
es been said that proceedings under s. 488 not
edings, s. 342 Cr. P. C. does not apply to them,
ission of s. 417 and describing the accused party
1 same case.

under s. 488 is not a proceeding of a civil
nature of s. 12 (1) of the Chin Hills Regulation,
C. 111: 1925 Rang. 140.

application under s. 488 the parties arrive at proper course is 'to dismiss the application as it is in civil court. An order of maintenance with a compromise cannot be enforced in Cr. C. 623 : 1930 Lah. 524, 42 P. R. 1888, '39 P. 926 Lah. 469 : 27 Cr. L. J. 779.

per and decision.

provides a 'speedy remedy and safeguards' a
from starvation : when other issues are raised
ed in the civil court and persons aggrieved
this section must take their case to the
862 : 1926 Mad. 346 : 27 Cr. L. J. 350 :

enance 'under this sec. does not affect the Court, 30 M. 400, 14 C. 276, 32 C. 479, but noted by the Civil Court restraining the error under this sec. 32 C. 479, 2 W. R. Cr. 58, *But by the amendment of sec. 439 effect has been decided.*)

ee of the Civil Court will prevail. 2 Weir

maintenance order under s 488, the relationship is based is declared by the court not to exist, the M. may be asked by further effect to the order of maintenance, 944: 24 Cr., L. J. 720, 14 C. 276 33 M.

S. 488. Jurisdiction and Procedure.—contd.

sufficient "residence together" of the husband and wife to give jurisdiction. 1929 Bom. 410 : 53 Bom. 781 : 1929 Cr. C. 462 : 31 Bom. L. R. 931.

—where the husband visited his wife in her father's house in another District and that was the last occasion when the husband and wife lived together the husband must be taken to have last resided with his wife in her father's house and consequently the courts in that District would have jurisdiction to entertain a petition under this sec. 1928 Lah. 853 : 110 I. C. 239 : 29 Cr. L. J. 687, 32 Bom. L. R. 764 : 1930 Bom. 348.

—the mere fact that the marriage of the parties had taken place within the jurisdiction of a Magistrate does not give the M. jurisdiction under s. 488 (8) 96 I. C. 865, 1926 Lah. 663 : 27 Cr. L. J. 1009.

—a M. of the 1st class has power to pass an order under this sec. although he cannot take cognizance of offences without complaint. 5 A. 237.

—s. 488 (h) gives power to the successor of a M. to re-open the order of maintenance on application. 2 Bvr. L. J. 61 : 75 I. C. 304 : 24 Cr. L. J. 928

—an order passed by a M. under this sec. will not be vitiated merely because the proceedings were instituted in a wrong Court, S. 530 (n) is applicable to such case. 49 C. L. J. 205 : 1929 Cal. 336 : 115 I. C. 402 : 30 Cr. L. J. 525.

—"may order" implies discretion of the court. 31 M. 185 30 M. 470.

—proceeding cannot be conducted summarily. 20 C. 351 : 11 M. 199, 361 P. L. R. 1905.

—evidence should not be taken *ex-parte*. 1 C. L. J. 102.

—where a party and his pleader are present in court an *ex-parte* order should not be passed. 1930 Cr. C. 623 : 1930 Lah. 524.

—the court should ask the pleader for the husband if he wishes to adduce evidence before closing the case. 1930 Nag. 59 : 120 I. C. 416 : 31 Cr. L. J. 110 : 1930 Cr. C. 147.

—It is a judicial matter and should be conducted. 5 A. 224, 13 W. R. Cr. 19, 8 W. R. Cr. 67, 2 Weir 629.

—an application should not be dismissed for non-payment of process fee. 16 M. 234.

—the amount must be definitely fixed. 2 A. 454, 14 M. 398, 12 C. 535.

—a M. cannot make an order for maintenance for a period prior to the date of application. 91 I. C. 354 : 1926 Lah. 532 : 27 Cr. L. J. 610 : 27 Punj L. R. 539, but a M. can vary his order as regards maintenance and award maintenance at an increased rate 3396 : 192 : Bom. 419 : 28 Bom.

a grant of grain allowances or under s. 488, the sec. provides only

S. 488. Jurisdiction and procedure.—*contd.*

—where the respondent in a proceeding under s. 498 Cr. P. C. is alleged to be insane, the M. has no power to appoint a guardian-ad litem. He must follow the procedure laid down in Ch. 34 Cr. P. C. and postpone the proceedings until the M. is satisfied that the respondent is capable of understanding the proceedings. 48 M. 388: 26 Cr. L. J. 701: 86 I. C. 77: 1925 Mad. 440.

—where in proceedings under s. 488 the accused gave evidence on his own behalf, he cannot afterwards object that the trial is vitiated by absence of examination under s. 342, 25 Cr. L. J. 1091: 81 I. C. 915: 1925 Cal. 339, 52 Bom. 768: 30 Bom. L. R. 957: 1928 Bom. 347. In this latter case it has been held that s. 342 Cr. P. C. does not apply to the proceedings under s. 418 Cr. P. C. So also in 1929 Lah. 32: 30 Punj L. R. 549: 10 Lah. 406: 112 I. C. 218: 29 Cr. L. J. 1002 where it has been said that proceedings under s. 488 not being criminal proceedings s. 342 Cr. P. C. does not apply to them. *Quære*: effect of omission of cl. 7 and describing the accused party as a "person" in cl. 9 same case.

—an application under s. 488 is not a proceeding of a civil nature within the meaning of s. 12 (1) of the Chin Hills Regulation. 25 Cr. L. J. 11: 76 I. C. 111: 1925 Rang. 140.

—where in an application under s. 488 the parties arrive at a compromise the proper course is to dismiss the application leaving them to enforce it in civil court. An order of maintenance passed in accordance with a compromise cannot be enforced in criminal court. 1930 Cr. C. 623: 1930 Lah. 524, 42 P. R. 1838, 39 P. R. 1905, 95 I. C. 315: 1926 Lah. 469: 27 Cr. L. J. 779.

Civil Court's power and decision.

—the section provides a speedy remedy and safeguards a deserted wife or child from starvation: when other issues are raised they should be determined in the civil court and persons aggrieved by an order under this section must take their case to the Civil Court. 92 I. C. 862: 1926 Mad. 346: 27 Cr. L. J. 350: 50 M. L. J. 44.

—order for maintenance under this sec. does not affect the jurisdiction of the Civil Court, 30 M. 400, 14 C. 276, 32 C. 479, but no injunction can be granted by the Civil Court restraining the M. from enforcing an order under this sec. 32 C. 479, 2 W. R. Cr. 58, but sec. 2 Weir 615. (*But by the amendment of sec. 489 effect has been given to Civil Court's decision.*)

—the previous decree of the Civil Court will prevail. 2 Weir 615, 27 A. 483.

—When after the maintenance order under s. 488, the relationship on which the maintenance is based is declared by the final decree of the Civil Court not to exist, the M. may be asked to abstain from giving any further effect to the order of maintenance. 46 M. 721: 73 I. C. 944: 24 Cr. L. J. 720, 14 C. 276 33 M. L. J. 449 *Ref.*

S. 488. Civil Court's power and decision.—*contd.*

—but the mere fact that civil suit is pending between the parties is not bar to giving effect to an order awarding maintenance under s. 488 so long as it is in force. 1930 Lah. 213 : 1930 Cr. C. 201 : 30 Punj L. R. 740.

—an order under s. 488 does not take away the jurisdiction of Civil Court and it can entertain a suit for declaration that the person who has been required to maintain another as his son is not his father. 70 I. C. 897.

—once a compromise is entered into proper remedy is by way of Civil Suit to enforce the compromise. 95 I. C. 315 : 1926 Lah. 469 : 27 Cr. L. J. 779, 1930 Cr. C. 623 : 1930 Lah. 524, 42 P. R. 1888, 39 P. R. 1905.

—the Civil Court cannot grant an injunction restraining the M. from enforcing the order for maintenance but the plaintiff could ask the M. to abstain from giving further effect to his order in view of the finding of the Civil Court. 70 I. C. 897.

—a subsequent decree of the Civil Court supercedes any order for maintenance under s. 488 but it is not an answer to the non-compliance with the order under s. 488. 3 Pat. L. T. 51 : 65 I. C. 576 : 23 Cr. L. J. 144.

—the weight to be attached to the decree of the Civil Court must depend upon the particular circumstances of the case and no hard and fast rule can be laid down that such a decree is for ever binding on the M. or that his discretion is never fettered. 46 A. 877 : 22 A. L. J. 806 : 82 I. C. 174 : 23 Cr. L. J. 1246.

—where after the decree for restitution of conjugal rights it was found that the wife was being ill-treated by her husband and driven out with blows a M. is justified in making order for maintenance and absolving her from the condition that she must live with her husband, *above case*

—where there was a decree of the civil court awarding maintenance to wife but that decree could not be executed on account of insolvency jurisdiction, the M. had under those circumstances jurisdiction under this sec. to pass an order for maintenance. 31 Bom. L. R. 1366.

Res-judicata.

—the principle of *res-judicata* applies, 5 A. 224, 1 C. L. R. 89, 17 Cr. L. J. 106, but not when the facts are different, 20 W. R. Cr. 58, 5 B. H. C. R. Cr. 81, 7 W. R. Cr. 10, 2 Weir 633, 9 B. 40, 5 N. W. P. H. C. R. 237.

—M's order dismissing an application for maintenance is a final order and he cannot entertain a second application for review or rehear it, 21 C. W. N. 344 : 18 Cr. L. J. 566, 1 C. L. J. 214 : 2 Cr. L. J. 213, 1916 P. R. 24, 38 I. C. 438, 32 I. C. 842 (C) but where the application is dismissed for default the M. can entertain a fresh application there being no adjudication on the first application. 24 C. W. N. 32 : 30 C. L. J. 128.

S. 488. Right of maintenance.**General.**

—s. 488 contemplates application by a wife or a child. Where the widow alleged herself to be a declared mistress and the application was made by her for the school fees of her son, held that it would require only a formal amendment of the application as one by the woman as guardian of the child and the amendment might be made by the court on its own motion. 82 I. C. 257; 1925 All. 73; 25 Cr. L. J. 1249.

the object of the proceedings for maintenance is to prevent
 sion of lodging,
 J. J. 1249.

not sufficient
 fad. 59; 26 Cr.

L. J. 1597, 76 I. C. 30; 25 Cr. L. J. 94.

—s. 488 provides for ordering maintenance where there is neglect or refusal, but where the husband was regularly paying Rs. 22 for the maintenance of the wife and children the M. was wrong in having entertained the petition at all. 4 Bur. L. J. 11; 86 I. C. 479.

—no order for the maintenance of a child should be passed against the father unless it is fused to maintain it. 101 I. C.

—the words "unable to mean unable to earn a livelihood might earn without depending I. C. 375; 26 Cr. L. J. 535.

—the word "means" in s. 488 does not signify only visible
 its employment. If a man is

to have the "means" to support
 27 Cr. L. J. 350.

cl. (8) includes a temporary residence and is not confined to permanent one. A stay of two months in a place temporarily with occasional visits in the permanent place of residence is regarded as amounting to temporary residence sufficient within the meaning of s. 488. 48 A. 479; 25 A. L. J. 435; 101 I. C. 670; 28 Cr. L. J. 494; 1927 All. 291.

—the place where the husband last visited the wife is the place where the husband "last resided" with the wife 1928 Lah. 853; 110 I. C. 239; 29 Cr. L. J. 687.

Of wife.

—the circumstance that the wife has relations able and willing to maintain her, 2 Weir 2, 11 C. W. N. 100 (note) or that she has ample means of her own, 10 Bur. L. R. 160, does not relieve the husband.

—when the wife was ill-treated and turned out by the husband refusal to live with him does not disentitle her to maintenance, 93 I. C. 971; 27 Cr. L. J. 507; 1927 Lah. 353.

—the word "cruelty" is not limited to violence. There can be legal cruelty, that is force, whether physical or moral, systematically

S. 488 Of wife.—*contd.*

exerted to compel the submission of a wife to such a degree and during such length of time as to injure her health and render a serious malady imminent. 11 A. 480 : A. W. N. 1889, 162.

—if after the order of maintenance the wife lives with the husband the maintenance order becomes ineffectual but she can make a fresh application, U. B. R. 1904 2nd Qr. 23 P. C., 2 Cr. L. J. 870, A. W. N. 1898, 217, *contra*, 162, by subsequent living with the husband the maintenance order does not come to an end. 50 M. 663 : 1927 Mad. 376 : 28 Cr. L. J. 271 : 1927 M. W. N. 111, 37 C. L. J. 180. 13 A. 50, 99 I. C. 1037 : 28 Cr. L. J. 237 : 38 M. L. T. 13, and in case of subsequent separation the wife can claim for arrears of maintenance. 1927 Mad. 1148, 99 I. C. 1037 : 38 M. L. T. 13.

—where the husband's offer to maintain his wife if she lives with him is *bonafide* one, she is not entitled to live separately and claim separate maintenance. 25 Cr. L. J. 1271 : 82 I. C. 279 30 Punj. L. R. 867 30 Cr. L. J. 861 : 117 I. C. 903, 1930 Cr. C. 809 : 1930 Leb. 665, except on proof of cruelty. 111 I. C. 669 : 29 Cr. L. J. 909.

—where the husband offers to maintain his wife it is the duty of the M. to ask the wife if she is willing to live with her husband. 9 Cr. L. J. 501, 1926 Lab 536 : 27 Punj. L. R. 233, 96 I. C. 394 : 27 Cr. L. J. 938.

—once a compromise is effected to pay maintenance there is no refusal to maintain on the part of the husband and the section has no application. 93 I. C. 315 : 27 Cr. L. J. 779 : 1926 Lab 469.

—the words "living in adultery" refer rather to course of conduct or to a single act, rather than to a single lapse from virtue, 52 B. 160 : 314, 30 M. 332 : 359, 29, C. W. N. R. 79

It means living in adultery at the date of application 26 A. 326 : 1 A. L. J. 18 : A. W. N. 1904, 23, 37 A. W. N. 1881, 30 M. 322 : 17 M. L. J. 279 : 5 Cr. L. J. 359, but a single act of adultery with a low caste man may be sufficient ground for refusal. 31 M. 185.

—where a woman to whom maintenance has been awarded gave birth to an illegitimate child which was her single act of misconduct she cannot be said to be "living in adultery." 29 C. W. N. 647 : 1925 Cal 794 : 26 Cr. L. J. 1184 : 88 I. C. 608, 1929 Nag. 238 : 115 I. C. 161 : 30 Cr. L. J. 403 : 1929 Cr. C. 262.

—subsequent adultery does not deprive the wife of the benefit of the maintenance as the order of the court stands good until it is cancelled by a later order. 117 I. C. 67.

—it must be shown that the husband has either refused or neglected to maintain the complainant and that the complainant is the wife of the defendant ; 16 B. 269, neglect or refusal may be by words or conduct, it may be express or implied. 9 Bom. L. R. 359 : 5 Cr. L. J. 334.

—non-payment must be the result of wilful negligence. 22 C. 291, 25 C. 291.

S. 488. Of wife.—*contd.*

—a conditional order that the husband is to take the wife and maintain her, otherwise pay maintenance at a fixed rate is illegal. 93 f C 1052 : 1926 Lab. 490 : 27 Cr. L. J. 556, 111 I. C. 575 : 29 Cr. L. J. 895 : 1929 Lab. 56.

—conditional order to live in the husband's house is illegal. 18 Cr. L. J. 529

—an order for maintenance conditional on the wife living in the village of the husband is illegal. 113 I. C. 67 : 30 Cr. L. J. 51.

—a wife is not bound to accept an offer of her husband to provide her maintenance in a separate residence. She may or may not agree to it but her refusal will not disentitle her to claim maintenance. 52 B. 763 : 1923 Bom. 418 : 30 Bom. L. R. 958 : 112 I. C. 473 : 29 Cr. L. J. 1049.

—in the case of minor husband the order cannot be made against his father. 26 P. R. 1901 ; an order of maintenance under this sec. cannot be passed against the father of the husband. 30 Cr. L. J. 135 : 113 I. C. 327.

—this statutory right is not affected by the personal laws of the parties. 19 M. 461 or by custom. 22 M. 246.

—order can be made so long as the relationship exists, so though a wife under the Mahomedan Law is entitled to maintenance during the husband's life, she is not entitled to it after his death. 2. L. J. 154, 27 M. 13, 8

entitled to maintenance
the expiration of that
O. W. N. 942, 32 Bom.

—a *moota* wife can claim maintenance under this sec. though under the *Shia* Law she is not entitled to it. 8 C. 736 : 11 C. L. R. 237.

B. 269 and the M. should

maintainance and not to enforce conjugal right. 10 B. 209.

—the court cannot under this sec. award anything but maintenance ; an order that the accused shall give the complainant a house to live in, is illegal. 29 Cr. L. J. 909 : 111 I. C. 669.

—the wife is not entitled to maintenance if she lives separately of her own accord. 6 N. W. P. H. C. R. 205, Rat. Un. Cr. 870.

—it is desirable for the court to consider the grounds of her refusal to live with her husband and in case he finds that there is just ground for her living apart from her husband he should pass an order of maintenance. 1930 Lab. 461 : 1930 Cr. C. 533.

—disagreement with other members of the family or with the
sec. 488. Of wife.—*contd.*
sintenance. 14 P. R. Cr. 1901.
6 N. 30 P. R. 1881, 31 P. R. 1882,
187 the keeping of concubine,
17

S. 488 Of wife.—*contd.*

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—this statutory right is not affected by the personal laws of the parties. 19 M. 461 *ac* by custom. 22 M. 245

—order can be made so long as the relationship exists, so though a wife under the Mahomedan Law is entitled to maintenance during *iddat* she cannot enforce her such right under this sec. 20 M. L. J. 12 : 10 Cr. L. J. 502, 32 C. 479, 4 C. L. J. 154, 27 M. 13, 8 O. 736, 5 A. 226, *contra*. Mahomedan wife is entitled to maintenance during the period of *iddat* and not after the expiration of that period. 1929 Oudh. 527 : 1929 Cr. C. 625 : 6 O. W. N. 942, 32 Bom. L. R. 582 : 1930 Cr. C. 610 : 1930 Bom. 178

—a *moola* wife can claim maintenance under this sec. though under the *Shia Law* she is not entitled to it. 8 C. 736 : 11 C. L. R. 237.

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—the wife is not entitled to maintenance if she lives separately of her own accord. 5 N. W. P. H. C. R. 205, Rat. Un. Cr. 870.

—it is desirable for the court to consider the grounds of her refusal to live with her husband and in case he finds that there is just ground for her living apart from her husband he should pass an order of maintenance. 1930 Lab. 461 : 1930 Cr. C. 533.

—a woman cannot claim maintenance of the family or with the maintenance. 14 P. R. Or. 1901.
... .. 30 P. R. 1881, 31 P. R. 1832,
... .. the keeping of concubine,

S. 488. Of wife.—*contd.*

—adultery on the part of the husband may entitle the wife to separate maintenance. 20 M. 470 F. B. 17 M. 260, *overruled*.

—a husband is bound to maintain his wife but he is not bound to do more than supply her with lodging, food and clothing. He is not bound to maintain her as his wife. 83 I. C. 257; 1925 All. 73.

—where a husband quarrelled with his wife and exchanged angry words and then the husband kept her away from the house there is no living apart by mutual agreement within s. 488, 1 Bur. L. R. 124.

—no separate maintenance can be allowed to a wife whom the husband agrees to protect and maintain in a manner suitable to her position in life merely because he refuses to cohabit with her. 42 M. L. J. 565; 40 M. L. T. 315; 66 I. C. 832; 23 Cr. L. J. 336.

—a subsequent decree of the civil court supersedes any order for maintenance that may have been previously passed under s. 488. But such a decree is no answer to an application for enforcement of an order previously obtained under s. 488 without proof by the husband that the condition of the decree for custody had been duly complied with and that without any sufficient cause she has left his custody. 3 Pat. L. T. 51; 65 I. C. 576; 23 Cr. L. J. 144; 1 Pat. L. R. 158.

—a mere temporary stay of the wife with her husband after the passing of an order under s. 488 cannot have the effect of cancelling the order but it may suspend the operation of the order for the time being. 37 C. L. J. 180; 75 I. C. 529; 24 Cr. L. J. 945.

—where after the maintenance order the husband and the wife have lived together and presented a petition of agreement, the order was when they filed the petition for arrears due till then. 45: 1923 Cal. 156.

—an order passed remain in force until the wife may have returned in such case it is the husband's order cancelled under sub-sec. 1148: 38 M. L. T. 13, 50 M. 1927 M. W. N. 111, 37 C. L. J. 180, 19 A. 50.

—the mere fact that husband has taken another wife is no ground for refusing to live with him 77 I. C.

—the admission of the husband that he has married another woman and that he refused to divorce the complainant will not by itself justify an order for separate maintenance as under the Mahomedan Law, a husband can marry more than one wife. 29 Cr. L. J. 895; 111 I. C. 575.

—the admission of the husband that he has married another woman and that he refused to divorce the complainant will not by itself justify an order for separate maintenance as under the Mahomedan Law, a husband can marry more than one wife. 29 Cr. L. J. 895; 111 I. C. 575.

S. 488. Of wife.—*contd.*

—a husband who has been ordered to pay maintenance cannot be guilty of wilful neglect under s. 483 (3) after he is adjudged on insolvent and the order remains in force. 50 C. 867.

—duty of husband to maintain his ill wife is absolute subject only to wife's chastity. 20 Cr. L. J. 93.

—offer to maintain must be an offer to maintain with the consideration due to her position as a wife. 17 M. 260, 20 M. 470.

—order of maintenance may be cancelled on proof of wife's subsequent adultery. 24 C. 618; 1882 A. W. N. 168, 8 B. H. C. R. 124, Rat. Uo. Cr. 353.

—a Christian wife of a reverted Hindu is entitled to maintenance. 4 M. H. C. R. Ap. 3.

—a Katar woman contracting *sagai* with another does not dissolve the previous marriage and her husband still remains liable to pay maintenance. 93 L. C. 1046; 27 Cr. L. J. 550; 1926 All. 42.

—a Muhammadan wife is entitled to maintenance till the date of divorce. 19 W. R. Cr. 72. 19 A. 50 Diss. M. may inquire into the plea of divorce. 21 P. R. Cr. 1894, 2 Weir 620, and the order of maintenance does not deprive the Muhammadan husband of the right of divorce. 8 B. H. C. R. Cr. 95, 7 B. 180, 19 A. 50 F. B. 14 C. 278, 1 Bom. L. R. 346.

—according to the Hanafi Law it is not necessary that the *talak* should be addressed directly to the wife to constitute a valid divorce. 31 M. 22, 36 C. 184, 30 B. 537, Diss.

—the mere fact that a Mahomedan husband has married a second wife will not be a ground for the wife refusing to live with him and for claiming separate maintenance. 77 L. C. 805; 25 Cr. L. J. 453. 1924 Nag. 297.

—mere conversion of a Christian husband to Judaism does not justify the wife in living apart. 97 L. C. 809; 1926 Sind. 278; 27 Cr. L. J. 1177.

—where no attempt was made to set aside a maintenance order in the maintenance proceeding on the ground that the marriage was null and void proper course for the husband was to apply to the Matrimonial Court for a declaration as to the nullity of the marriage. 93 L. C. 83; 1927 Bom. 46; 28 Cr. L. J. 51.

Of child.

—“unable to maintain itself” refers to child and not to wife. 10 Bur. L. R. 166.

—a person who has attained majority is not a “child” within s. 488 and is not entitled to maintenance from his father. 5 N. L. J. 247; 65 L. C. 631; 23 Cr. L. J. 167, 37 M. 565, 1 Bur. L. J. 123.

—“child” simply means son or daughter, therefore any son or daughter may claim maintenance whatever his or her age may be so long as he or she is unable to maintain himself or herself. 28 P. W. R. 1910 Cr., 6 Ind. C. 960; 11 Cr. L. J. 427, it generally means a person who has not reached the age of 18. 37 M. 565.

—order cannot be made for the maintenance of an unborn child. 3 A. 70.

S. 488. Of child.—*contd.*

—the father is not to maintain an illegitimate daughter after marriage. 11 C. W. N. 100 (note).

—the child is to be maintained if the mother is known to receive visitor. 10 C. W. N. 112. (note).

—the father is to maintain his legitimate or illegitimate child unable to maintain itself but not the child of another man. 94 I. C. 354; 27 Cr. L. J. 610; 1926 Lah. 532; 7 Lah. 365.

—a child that possesses a right to maintenance from its mother's property is not entitled under this sec. to an order for maintenance against his father. The words "unable to maintain" are not confined to physical inability but includes pecuniary inability. 39 M. 957.

—with regard to the maintenance of children it is sufficient under subsec. (1) of s. 400 if the mother or refusal to maintain them in future is not sufficient of order. 27 Bom. L. R. 359; '924 M. W. N. 465; 19 L. W.

—apart from Hindu Law maintenance is awardable to illegitimate child on general principle 32 O. 479.

—the M. cannot enter into the question as to the lawful guardianship of the child. 4 C. 374, P. R. 1886, 38, 19 M. 461.

—a certificate of guardianship should be taken by the mother. 18 P. R. Cr. 1894.

—s. 488 applies to the case of a father who has sufficient means to maintain the child but neglects to do so. 1 Bur. L. J. 97; 1922 U. B. 15.

—what entitles the children to get maintenance is not merely a formal refusal of children's father to maintain but also his neglect to do so. 76 I. C. 30; 25 Cr. L. J. 94; 1925 Mad 624, 83 I. C. 633; 27 O. C. 271.

—a married woman is entitled to maintenance for her illegitimate children from the putative father. 18 B 463.

—so long as the mother has the custody of the child she is entitled to the allowance granted for the maintenance of the child, valid divorce. 1 Bur. 2 Weir 630, or takes without his consent.

2 Weir 630.

—an infant daughter living under the legal guardianship of her mother is entitled to an order for maintenance against her father even if the father is willing to maintain the child if her custody were given to him. 9 Lah. 313; 1928 Lah. 543; 29 Punj L. R. 401; 112 I. C. 476; 29 Cr. L. J. 1052, (25 M. L. J. 355, 8 Bur. L. T. 134) Rel on, (22 P. R. Cr. 1917 and 18 P. R. Cr. 1891) Dist., but see 1930 Lah. 886.

—where application for the maintenance of an alleged illegitimate child is made by the child's mother the application should be

S. 488. Of child.—*contd.*

by the woman as guardian of the child and for the child. 25 Cr. L. J. 1249: 82 I. C. 257 (All)

—when maintenance is claimed for illegitimate child, it is not sufficient to find that the def. may have been the father but that in all reasonable probabilities none else could have been, 2 Weir 621, and the wife can be examined as to the non-access of her husband, 18 B. 463.

—a compromise of lawful guardian cannot be set aside except on the ground of fraud, 2 Weir 631, but the circumstances may be proved, 13 P. R. Cr. 1885, 25 A. 165.

—duration of allowance in case of child cannot be fixed. 18 P. R. Cr. 1884.

—maintenance is intended for food, clothing and lodging and does not include schooling-fees. U. B. R. 1909, 11 Cr. L. J. 40.

Amount of maintenance and its nature.

—the maximum of Rs. 100 fixed by the sec. is the maximum awardable to each of the applicants. So an awarding of a sum of Rs. 100 for the wife and Rs. 100 for each of the children on the application of the wife is legal. 49 M. L. J. 335: 90 I. C. 669. 1926 Mad. 59: 26 Cr. L. J. 1597.

—the M. cannot fix the rate at anything more than one hundred rupees per mensem. 98 I. C. 83: 1927 Bom. 46: 28 Cr. L. J. 51: 28 Bom. L. R. 1299.

—the amount must be definitely fixed. 2 A. 454, 14 M. 398, 12 C. 535.

—a M. is not entitled to order a grant of grain allowance or separate residence being provided under s. 488, the sec. provides only cash allowance. 82 I. C. 279: 25 Cr. L. J. 1271.

—s. 488 only permits of the court directing a monthly payment of money and an order directing a mixed payment in kind and cash every year is contrary to its terms. 81 I. C. 618: 26 Bom. L. R. 186. 25 Cr. L. J. 965.

—where an order was passed by the justices of the peace in England awarding maintenance to a wife at a certain rate and the M. in India varied the rate and directed the same to be paid from the date of the order of the justices but . . . as regards the directing future . . . 1. 899: 29 Cr. L.

Enforcement of order of maintenance.

—an order for maintenance cannot be cancelled except on the ground of change of circumstances mentioned in sec. 489. 27 A. 11: A. W. N. 1904, 149: 1 Cr. L. J. 595

—the counter petitioner may on proof of the circumstances mentioned in sub-sec. (5) of this sec. get the order cancelled or he may get it altered under s. 489 Cr. P. G. otherwise it must be deemed to be in force: the mere fact that the wife returned to live with

S. 488. Enforcement of order of maintenance.—contd.

husband cannot have the effect of bringing the order to an end automatically. 50 M. 663: 1927 Mad. 376: 28 Cr. L. J. 271: 1927 M. W. N. 111, 37 C. L. J. 180, 19 A. 50, 99 I. C. 1037: 28 Cr. L. J. 237: 38 M. L. T. 13,

—an order for maintenance can be enforced by the court which passed the order even though the husband happens to reside outside its jurisdiction at the time. 1928 M. W. N. 837: 1928 Mad. 1171: 55 M. L. J. 516: 111 I. C. 852: 52 M. 77.

—no claim under s. 488 is enforceable against the estate of the deceased and it cannot be enforced in respect of arrears accrued during his life-time 17 C. W. N. 1130

—the payment of maintenance must be monthly. 2 Weir 627, and in coin. 2 Weir 626, 3 P. R. Cr. 1887.

—enforcement of payment of arrears is discretionary with the M. 1909 U. B. R. 111 Cr. Pp. 19 and 21: 11 Cr. L. J. 79, 20 M. 3 Dist.

—the imprisonment order ought to cease upon payment being made, 22 C. 291, but the imprisonment served does not absolve the person from the liability for arrears. 3 W. R. Cr. 61.

—before an order for imprisonment is passed, wilful negligence must be proved 22 C. 291, 23 C. 291, 25 A. 165.

—imprisonment is not limited to one month but the maximum for one month's arrear is one month. 20 M. 3, 25 C. 291, 12 P. R. 877 *Contra* 9 A. 240.

—neither imprisonment nor the taking of security can be ordered in anticipation of default. 5 M. H. C. R. Ap. 34, 24 W. R. Cr. 72

—no suit lies for the recovery of arrears. 2 P. R. 1876.

—when execution of an order of maintenance is applied for and the counter-petitioner contends that the order should not be executed and sets out certain grounds in support of the contention the court is bound to consider the sufficiency thereof The expression "sufficient cause" in sub-ol (3) means that the M. should use his judicial discretion having regard to all circumstances and that such discretion should not be fettered or limited by any definite rule. 87 I. O. 105: 21 L. W. 702, 48 M. L. J. 494: 26 Cr. L. J. 953: 1925 Mad. 715.

—where maintenance is charged on the joint estate of the person ordered to pay it and his brother and the order is not questioned in appeal or revision the brother is not entitled to object to the attachment and sale of the joint property in execution. 49 B. 906: 27 Bom. L. R. 1363: 91 I. C. 604: 1926 Bom. 103.

S. 489. (Alteration in allowance).

N. B. Effect has been given by the proviso in the Amendment to Civil Court decisions.

—alteration refers to an alteration in amount and not to a stoppage. 5 A. 226, 19 A. 50 F. B., 15 A. 143, overruled.

S. 489. (Alteration in allowance).—*contd.*

—but it has been held by the Madras H. C. that the reduction of the maintenance to nothing would also come within the meaning of the word alteration. 48 M. 503: 1925 Mad. 491: 86 I. C. 220: 1925 M. W. N. 67.

—order of maintenance may be cancelled on proof of wife's subsequent adultery. 24 C 638: 1882 A. W. N. 168, 8 B. H. C. R. 124, Rat. Un. Cr. 351.

—"change in circumstances" refers not only to pecuniary change 21 P. R. Cr. 1894.

—"change in circumstances" includes the child getting older or the birth of another child or the death of a child, 12 C. 535. 14 M. 398, but does not include the re-marriage of M. wife, 27 A. 11 or, the possible earning of deserted wife, 1887 A. W. N. 107.

—the sec. contemplates only cases where there is a change in the financial position of the person affected. The fact of sub-
the allowance though the
husband refusing to pay her
668: 29 Cr. L. J. 908: 30

—in reducing the maintenance amount the M. cannot anquire whether at the time when the husband was directed to pay the allowance he had sufficient means to pay that allowance because that in effect would be a review of the previous judgment of the court. *above case.*

—parties compromising must apply under this sec. 25 A. 165, 8 W. R. Cr. 1, 17 W. R. 1885.

—compromise between parties is a bar to an application under s. 489. 1930 Lah. 524: 1930 Cr. C. 623.

—order of reduction does not affect execution for arrears. 22 C 291

—the decree of the civil court for restitution of conjugal rights, does not *ipso facto* vacate an order for maintenance under s. 488. When an application is made to vacate the order, the M. must in passing an order take that fact into consideration. 3 Rang. 150: 89 I. C. 317: 1926 Cr. L. J. 1341: 1925 Rang. 268

—where the object in getting the decree for restitution of conjugal rights was merely to get the maintenance order cancelled, and not a *bona fide* wish to live amicably with her, the court should not exercise its discretion under s. 489 (c) and cancel the order for maintenance. 49 M. L. J. 269: 1925 M. W. N. 645: 1925 Mad. 1218: 91 I. C. 62

—s. 489 is sufficiently wide to enable the M. to reduce the maintenance already allowed to nothing, practically cancelling him. The word "alter"
legitimate daughter has
the court to cancel the
re has by her marriage
48 M. L. J. 183: 1925
1925 Med. 491.

S. 489. (Alteration in allowance).—*contd.*

—the amendment does not take away the discretion of the M. in maintenance orders. 96 I. C. 124; 27 Cr. L. J. 876.

—a M. can vary his order as regards maintenance and award maintenance at an increased rate from the date of application. 96 I. C. 396; 1926 Bom. 419; 28 Bom. L. R. 669; 27 Cr. L. J. 940.

—when a Magistrate passes a wrong order under sub-cl. (2) of this section it should be corrected by the H. C. in revision. 96 I. C. 124; 27 Cr. L. J. 876.

S. 491. Power to issue directions of the nature of a habeas corpus.

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26 C

491 the Criminal Appellate
of the applications under
85 I. C. 913; 52 C. 319;

the application is to be made to the H. C. in its ordinary
C. W. N. 1233, 6 O. W. N. 254.
to a case when there has been a
conviction and sentence 41 C. W. N. 167; 18 Cr. L. J. 311.

—the power under s. 491 (1) (b) is to be exercised in matter of urgency, where, for instance, the father is suddenly deprived of the custody of his son and the life of the son is in danger. It being a remedy for a person deprived of his liberty the power under the sec. should be exercised
is disputed. 1930 All. 260

—when a person is
made under this sec. the
first instance and not to
44 C. 459.

—the right to the issue of *habeas corpus* passed by the H. C. has not been taken away by the special procedure provided by clauses 6 and 7 of sec. 3 of the Indian Extradition Act. 46 C. 52; 20 Cr. L. J. 257; 39 C. 164; 14 O. L. J. 375; 15 C. W. N. 1053.

—the H. C. has power to issue a writ of *Habeas Corpus* to *muffassil* places and even in cases of persons who are not European, British subjects. Sec. 491 merely substitutes or adds for the Presidency Towns a different form of procedure less cumbersome than the granting of a writ of *Habeas corpus*. 43 M. L. J. 396; 31 M. L. T. 304; 68 I. C. 838; 23 Cr. L. J. 614 F. B.

—the H. C. cannot issue a writ of *habeas corpus* against a person arrested by a person authorised under s. 10 of the Sind Encumbered Estate Act. 99 I. C. 930; 1927 Sind 123; 28 Cr. L. J. 194.

—jurisdiction under this sec. depends on arrest or detention within the jurisdiction. 46 C. 52.

—the powers under this sec. have nothing to do with the

S. 491. (Power to issue directions of the nature of a *habeas corpus*.)—*contd.*

—the application is to be made to the Judge sitting to exercise original criminal jurisdiction. 6 C. W. N. 251; 44 C. 76.

—on an application under sec 591, in the nature of an application for *habeas corpus* made by the *de jure* guardian alleging that a minor girl of 17 years was detained in the custody of the respondent against the will of the applicant and alleging that a marriage of the girl against the will of the guardian *de jure* was contemplated, held, that the primary consideration for the court in such a case was the welfare of the minor and that the applicant had not an absolute right to demand the custody of the minor. 47 M. L. J 614; 1924 M. W. N. 870; 1924 Mad. 873, (33 M. 288, 16 B. 307), *Ref.*

—where the husband applies for the custody of his minor girl aged about 13 the court has to consider the welfare of the minor and the minor's opinion is entitled to no weight. 1929 Mad. 834; 1929 M. W. N. 689; 1929 Cr. C. 482; 47 M. L. J 642.

—no application for the issue of a writ of *habeas corpus* can be maintained apart from the Cr. P. C., 54 C. 727; 31 C. W. N. 593; 1927 Cal. 496; 102 I. C. 617.

—the extraordinary powers of *habeas corpus* in a High Court does not take away from the litigants the ordinary rights which they had under the Civil Court 95 I. C. 65; 27 Cr. L. J. 737; 1926 Rang. 76.

—the proceedings by way of *Habeas Corpus* are proceedings calling upon a person having the custody of a prisoner to produce him and demonstrate under what authority he was held in the custody. 91 I. C. 69; 27 Cr. L. J. 37; 1924 Mad 126.

—when bail application is pending in the Sessions Court petitioner cannot apply to the H. C. for *habeas corpus* under s. 491, the proper course being to apply to the lower court and obtain orders before coming up to the H. C. 1929 Lah. 522; 1929 Cr. C. 81; 114 I. C. 444; 30 Cr. L. J. 301.

—the Dy Commissioner of Police in Calcutta is not bound to place an offender forthwith before the Magistrate and is entitled to take such steps as may be necessary to complete an investigation before placing the matter before a M. But where such power is improperly exercised the H. C. may interfere under this section. 41 C. L. J 134; 97 I. C. 945; 27 Cr. L. J. 1185. So also when the Commissioner of Police acts under a warrant issued by the Secretary to the Local Government under s. 4 of the Goondas Act. 30 C. W. N. 791; 1926 Cal 961.

—the Bombay High Court has jurisdiction to issue a writ of *Habeas Corpus* for the protection of children outside British India, the custody or control of a
appeal lies from the order
m. 332; 95 I. C. 49; 27 Cr.

S. 491. (Power to issue directions of the nature of a habeas corpus.)—*confd.*

—where the person wanted is in the custody of a Native State directions under s. 491 (1) cannot be issued. 1929 All. 347 : 119 I. C. 527 : 27 A. L. J. 520.

—where Hindu minors are with the mother who is inclined to adopt Christianity and she is likely to bring them up in such a way that they will ultimately express desire to be converted to Christianity the court cannot interfere with the exercise of the mother from under the Guardian is any powers under L. J. 1048 (14 M. I.) Ref.

—but where a person is entitled to a remedy under this sec. the fact that he is also entitled to a remedy under the Guardian and Wards Act does not disentitle him from claiming the former remedy. 1929 M. W. N. 689 : 1929 Cr. C. 482 : 57 M. L. J. 642 : 1929 Mad. 834 : 53 M. 72

S. 492. (Power to appoint public prosecutor.)

—a pleader appointed by the D. M. for the purpose of a particular case is not a Public Prosecutor, 8 A. 291 F. B., 2 Weir 553, nor a pleader appointed with the permission of the D. M. is a P. P.

—the absence of a P. P. in a Sessions trial is simply an irregularity curable by sec 537. 35 P. R. Cr. 1887.

—the words "in the absence of the Public Prosecutor" are very wide including the temporary absence of the Public Prosecutor. 1930 Sind 156 : 1930 Cr. C. 620.

—the P. P. should avoid any proceeding likely to intimidate or unduly influence witnesses on either side. There should be on his part no unseemly eagerness for, or grasping at conviction 8 B. H. C. R. Cr 126.

—the duty of the P. P. is not to represent the Police but the Crown, and his duty should be discharged fairly and fearlessly. In capital cases the P. P. should place before the court the testimony of all available eye witnesses. 21 C. W. N. 28 : 42 C. 422.

—the P. P. is not bound to call an unnecessary witness. 16 A. 84

—private complainant was allowed to conduct the prosecution. After the framing of the charge, on the application of the accused the Dt. M. directed the prosecuting Inspector to withdraw the case, held neither a 491 nor sec. 495 applied and the order was illegal. 21 A. L. J. 855 : L. R. 5 A. 1 Cr.

S. 493. (Public prosecutor may plead in all courts, pleaders privately instructed to act under his direction.)

—the Crown is the prosecutor, 13 B. 391.

—the Public Prosecutor may always avail himself of the services of the counsel retained by a private individual but in doing so he does not deprive himself of the management of the case. 11 B. 11, C. R. 102.

S. 493. (Public prosecutor may plead in all courts, pleaders privately instructed to act under his direction)—*contd.*

—a pleader appointed by the brother of the murdered man is not a Public Prosecutor. 1886 P. R. 29.

—when a Public Prosecutor has the charge of a prosecution the pleader appointed by any private person including the Agent of the Railway Administration cannot act without the direction of the Public Prosecutor. S 145 (2) only entitles a person authorised by the Railway Agent to conduct prosecution without the permission of the Magistrate 1925 Pat. 755; 92 I. C. 697; 27 Cr. L. J. 313; 7 Pat. L. T. 343.

—this sec. does not bar the hearing of an application put in by a private party without the consent of the Public Prosecutor, for changing the charge. 1929 Lab. 127 29 Cr. L. J. 1056. 112 I. C. 450.

—the word "act" does not mean something other than examining or cross-examining witness or addressing the court. The word is not used in a technical sense 1939 M W N 769.

S. 494. (Effect of withdrawal from prosecution.)

—the P. P. can only withdraw all the charges and not only one of the charges 3 C L J 18 (note)

—If the P. P. withdraws a charge and the court approves of it the accused shall be acquitted, 5 M L T 216 and not discharged. 12 M 35, 24 Cr. L. J. 413 (Lab).

—this sec. contemplates the withdrawal of a case by the Public Prosecutor in cases tried by the jury, before the return of verdict and in other cases before the judgment is pronounced. A case cannot be withdrawn under the section after the conviction of the accused by the first court and in the appellate stage 46 C. L. J. 121 - 28 Cr. L. J. 833 1927 Cal. 816; 104 I. C. 449.

exercise of discretion if the M. relies on the discretion of the Public Prosecutor in withdrawing the prosecution in order that his evidence might be available as against the co-accused 56 C. 1023: 33 C. W. N. 463; 1929 Cal 319.

—when a court, acting under this sec. gives its consent to a withdrawal from a prosecution, it should record its reasons in order that the H. C. may be in a position to say whether the discretion vested in the court has been properly exercised 22 C W N. 69, 48 C 1105, 26 C. W. N. 880, 2 Bur. L. J. 287, 6 N. L. J. 177 - 72 I. C. 361 - 24 Cr. L. J. 371, *contra* 5 M. L. T. 216, 3 Pat. 708

—failure to obtain court's consent in the withdrawal amounts to a mere irregularity 97 I. C. 364 1927 Pat. 13; 27 Cr. L. J. 1100.

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—failure to obtain court's consent in the withdrawal amounts to a mere irregularity. 97 I. O. 364; 1927 Pat. 13; 27 Cr. L. J. 1100.

S. 494 (Effect of withdrawal from prosecution)—contd.

—accused against whom the case is withdrawn by the P. P. may be examined as witness against the co-accused. 25 B. 422.

—the fact that there is evidence against the accused which if believed would end to conviction is not the only reason which should guide a court in granting or refusing permission. 92 I. C. 750 : 1926 Mad 296 : 27 Cr. L. J. 334.

—no person other than the Public Prosecutor can withdraw from the prosecution ; even the Vakil acting under the direction of the Public Prosecutor cannot do so. 46 C. 700

—whether under the circumstances of the case the Dt. Magistrate can direct withdrawal 1930 Sind 156 : 1930 Cr. C. 620.

—this sec. does not apply to security proceedings, it applies only to proceedings which can end in a discharge or acquittal of the accused. 36 M. 315.

—the complainant has no *locus standi* in the matter of withdrawal of a prosecution by the Court Sub-Inspector who is the Public Prosecutor. 1 Pat. L. T. 400.

—there is nothing in law to prevent the M from entertaining a complaint after the discharge of the accused persons in a previous police case under s. 494 Cr. P. C. An order made under s. 495 (a) is an order of discharge and therefore s. 403 does not debar the entertainment of a fresh complaint on the same facts. 1924 Pat. 226 A. I R 1924 Pat. 797 : 83 I. C. 689, 28 C. 652, 29 C. 728, 40 C. 71, 2 Pat. L. 34 fol. 34 C. W. N. 196 : 1930 Cal. 369 : 1930 Cr. C. 568.
For contrary view see below.

—order of discharge in summons cases under this sec. is an order of acquittal. 72 I. C. 593 : 24 Cr. L. J. 433 : 1923 Leh. 163

—an order of acquittal under this sec. bars a retrial of the same offence by virtue of sec. 403 9 N. L. R. 26, 40 M. 976, 18 Cr. L. J. 329 (M), 23 Cr. L. J. 305, 15 S. L. R. 131, and operates as bar of further prosecution. 66 I. C. 657.

—there is no difference between a discharge by a M. as a consideration of the evidence tendered and a discharge at the instance of the Public Prosecutor under s. 494 In both the cases the Dt. M. may under s. 436 Cr. P. C. direct the Subordinate M. to make a further inquiry. 1929 Lah. 315 : 30 Punj. L. R. 58 : 114 I. C. 50 : 30 Cr. L. J. 233.

—where a M. passed an order under s. 494 Cr. P. C. and subsequently set aside the order of discharge on the filing of fresh complaint, the previous order of discharge did not bar the later complaint being inquired into. 34 C. W. N. 196 : 1930 Cr. C. 568 : 1930 Cal. 369.

—the accused against whom a case has been withdrawn under this sec. can be examined as a witness in the case against his co-accused. 25 B. 422, 33 C. 1353, 47 C. 154

—an accomplice witness against whom a criminal case has been withdrawn under s. 494 is less reliable than one to whom a pardon has been tendered. 73 I. C. 808 : 24 Cr. L. J. 696

S. 494. Revision.

—the H. C. is in a position to consider whether the discretion to give consent to the withdrawal of a prosecution has been rightly exercised. 48 C. 1105, 26 C. W. N. 880, 1 Pat. L. T. 400. But where good grounds have been shown the H. C. will not interfere. 71 I. C. 53 : 24 Cr. L. J. 5 (C), 2 Pat. 708, 5 M. L. T. 216, 71 I. C. 693 : 24 Cr. L. J. 229 : 26 C. W. N. 880.

—where a charge was withdrawn and the M. recorded an order of acquittal the H. C. would not interfere even if the charge was a wrong one. 2 A. L. J. 30.

—If the court has allowed the Public Prosecutor to withdraw the case upon insufficient ground and has passed an order of acquittal, the private prosecutor cannot be heard to object to it in revision. 2 Pat. 708, 77 I. C. 734 : 25 Cr. L. J. 416 (Pat.), 22 C. W. N. 69, 48 C. 1105, 26 C. W. N. 880 Diss. 42 C. 612 *fol.*, 1 Pat. L. T. 400 *Ref.*

—where the order of discharge under this sec. is a proper one no further enquiry should be directed under s. 436. 2 M. W. N. 74.

S. 495. (Permission to conduct prosecution.)

—the permission of the M. is discretionary and the H. C. will not interfere with such discretion, 2 Weir 655, and the Chief Court declined to interfere with the order of the Dt. M. 1905 P. R. 6.

—the M. allows private Vakils of good character to conduct the prosecution. 12 M. L. J. 354.

—the fact of a person being a prosecuting Inspector does not deprive him of his right as a private citizen to prosecute a case, 10 Bom. L. T. 213.

—it is doubtful whether the words "any person" would include an absolute stranger who had no connection with the prosecution. 11 A. L. J. 313.

—when the offence affects the public peace and security a private person should not be permitted to conduct the prosecution. 18 Cr. L. J. 329 (Mad).

—the words "any such officer" refer only to the Advocate General, Standing Counsel mentioned in sub-section (1). If any person other than these officers e.g. an Advocate privately engaged, withdraws from the prosecution the effect of sec. 494 does not follow and the trial will proceed. 1908 Cr. B. R. 1st Qr. Cr. P. C. 15, 1911 M. W. N. 106.

—the Police officers are debarred from conducting prosecution in important cases in which they may be witnesses. Ratanlal. 173, 26 B. 533.

—when a person is permitted to conduct a case as prosecutor he may instruct a counsel to appear. 11 B. H. C. R. 102.

—the first paragraph of sec. 495 does not in any way limit the scope of the third paragraph. There is nothing in s. 495 to warrant the action of a M. in taking the prosecution out of the hands of the complainant's pleader and handing it to some other person who is not the public prosecutor. 25 Cr. L. J. 571 : 81 I. C. 59 : 1925 Sindh 99.

Ss. 496-502. (Bail,—bail-bond,—surety-bond,—discharge of surety, etc.)

Sub-headings of notes.

- (1) When bail should be granted.
- (2) When bail should not be granted.
- (3) Sufficiency of bail and fitness of surety.
- (4) Bond of accused and sureties.
- (5) Interpretation of bail bond.
- (6) Forfeiture and cancellation of bond
- (7) Discharge of sureties.
- (8) Jurisdiction of H. C., the Sessions Court and the Dt. M.

(1) When bail should be granted :

—the requirements as to bail are to secure the attendance of the accused at the trial and bail is not to be withheld *merely* as a punishment. The proper test is whether it is probable that the party will appear to take his trial. The test is applied with reference to the nature of the accusation, the nature of the evidence in support of the accusation, the severity of the punishment which the conviction will entail, and in some instances, the character, means and standing of the accused. 51 C 402 : 38 C L J 388. 1923 Cal. 476 : 81 Ind. C. 220—*All cases discussed* Followed in 1929 Leb 284.

—the discretion of the courts in matters of bail is less fettered under the Amended Code than before the Amendment 51 C. 402 : 38 C L J. 388. 81 I. C 220 : 1923 Cal. 476.

an accused person ought to be released on bail until reasonably believing him to be
N. 51 : 4 M. L. T.

—the main question for consideration was that were there reasonable grounds for believing that the petitioners were guilty of offences of which they were accused. Other considerations must also arise and one of these which has always guided the courts of justice is whether the accused if bailed would abscond and attempt to escape by avoiding or delaying an enquiry or trial. The detentional but its object is to alleged offence and some I would, however, justify L. J. 409 4 M. L. T. 432. allow the bail in the case of under-trial prisoners rather than to refuse it. That granting bail would be prejudicing the case is no ground for refusing bail 26 Punj L. R. 440 : 7 Leb. L. J. 331.

—persons accused of non-bailable offences should not be released on bail as a rule but they may be so released if there are reasons for

Sa. 496-502. (1) When bail should be granted :—contd.

—there is no difference between the English and the Indian practice. Bail is not to be withheld by way of punishment and the requirements as to bail are merely to secure the attendance of the accused at the trial. 102 I. C. 909: 28 Cr. L. J. 621: 1927 Pat. 302: 6 Pat. 802.

—in view of the express provisions of the Indian statute it is not open to follow the English authorities which lay down the principles on which bail is granted in that country. 1918 Slad 142: 109 I. C. 118: 29 Cr. L. J. 470.

—bail is not to be withheld merely as a punishment. Its object is to secure the attendance of the accused at the trial and the test to be applied is whether it is probable that the party will appear to take his trial considering the nature of the accusation, the evidence in support of it and the punishment awardable. 33 C. L. J. 388, 1927 Pat. 302: 102 I. C. 909. 28 Cr. L. J. 621 8 Pat. L. T. 557.

—the power to admit to bail is not arbitrary but judicial one. 33 C. L. J. 388.

—where the complaint under s. 124-A I. P. C. is not in proper form bail should be granted. 1929 Lab. 284.

—the court is not called upon to conduct a preliminary trial of the case and consider the probability of the guilt of the accused before granting bail. But it may incidentally look at the weight of the evidence against the accused as a necessary part of its proper function, that is, to enquire if the giving of the bail might lead to a real danger of his absconding or if there is any real reason to suppose that he is likely to tamper with the witness for the prosecution. 1925 Mad. 1224. 22 L. W. 156.

—persons accused of non-bailable offence may be released on bail if there are reasons for believing that the case against them will not succeed and there are special circumstances justifying bail. 83 I. C. 483: 1923 All. 479: 26 Cr. L. J. 5.

—a mere vague allegation that the accused, if released, will tamper with the evidence is not sufficient to refuse bail. 32 Bom. L. R. 1131: 1930 Bom. 484

—it stands to reason that if in the case of a person who is convicted and sentenced to imprisonment, bail can be granted, then in the case of a person who is charged with an offence, bail can also be granted. 1927 Pat. 302: 6 Pat. 802. As any rate no restriction should be placed upon the wide provisions of sec. 498. 50 C. 969: 37 C. L. J. 592: 75 I. C. 537: 24 Cr. L. J. 953.

—a person who is not an accused but merely a person complained against, may be ordered to furnish bail subject to police investigation. 88 I. C. 727.

—the expression "death or transportation for life" in s. 497 does not extend to offences punishable with transportation for life only but means only those offences for which death and transporta-

Ss. 496-502. (1) When bail should be granted :—*contd.*

tion are alternative sentences. 97 I. C. 39: 27 Cr. L. J. 1063, 93 I. C. 65: 1926 Rang 51: 27 Cr. L. J. 401.

—the fact that the word "with" does not appear before "transportation for life" in s. 497 (1) is not material. In exercising the discretion under s. 498 the court should have regard to the provisions of s. 497 (1). 1928 Bom. 244: 111 I. C. 661: 29 Cr. L. J. 901: 30 Bom. L. R. 622.

—the Court is not to confine its attention only to the question whether the prisoner is or is not likely to abscond as other circumstances may also affect the question of granting bail to persons accused of having committed crimes of grave and serious nature. It is the right of an accused person to demand the trial without unreasonable delay, and such delay will dispose the court to grant bail. 13 C. W. N. 43: 36 O. 166: 9 Cr. L. J. 375, 6 M. 63: 2 Weir 409, 1929 Sind 137: 1929 Cr. C. 337: 117 I. C. 773.

—in case of bailable offence, however serious an offence may be if
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A. L. J. 363. 108 I. C. 689: 29 Cr. L. J. 450

—bail should be allowed when there was adjournment after charge to enable prosecution to adduce further evidence. 10 C. W. N. 163 (notes),

—an accused person who has been released on bail may be again committed to custody if a *prima facie* case is made out against him. 13 C. W. N. 51: 36 O. 174: 9 Cr. L. J. 409: 4 M. L. T. 432, 13 C. W. N. 43: 36 O. 166: 9 Cr. L. J. 375. 1 Ind. C. 738, 32 C. 80. 8 C. W. N. 779

—where a person has been discharged after executing a security bond and is re-arrested for a non-bailable offence he is entitled to be released on bail. 1929 Pat. 654: 117 I. C. 628: 30 Cr. L. J. 809: 1929 Cr. C. 382: 10 Pat. L. T. 801.

—some direct evidence of guilt of the accused should be required to justify the Magistrate in refusing bail, and with each remand the necessity for production of implicating proof becomes stronger. 6 M. 69: 2 Weir 413.

—In a case of contempt, the court before which the offence is committed, is bound under s. 163 Cr. P. C. to accept bail if sufficient bail is tendered. 12 W. R. 18.

—a Magistrate is not competent to refuse bail unless law sanctions such refusal. 1 C. L. R. 130.

—the power of the High court to grant bail to an accused person under s. 498 Cr. P. C. is quite unfettered; it is untouched by the Criminal Law Amendment Act (XIV of 1908). 14 C. W. N. 512: 6 Ind. C. 8.

—but when the provisions of the Criminal Law Amendment Act have been applied to the proceedings before a Magistrate, the Sessions Judge ceases to have jurisdiction to grant bail under s. 498, Cr. P. C. 14 C. W. N. 516: 6 Ind. C. 10, 14 C. W. N. 512 *Ref.*

Sa. 496-502. (1) When bail should be granted:—contd.

—the rule in respect of non-bailable offence is that bail is not to be taken except in special circumstances. 8 Bom. L. R. 420 : 3 Cr. L. J. 499.

—where a person is arrested by the Police under s. 55 Cr. P. C., he should always be given the option of release on reasonable bail being supplied. 14 A. 45.

—It is only in the special circumstances referred to in cls (3) and (4) of s. 107, that a Magistrate can detain a person in custody until the completion of the inquiry and a Magistrate is bound under s. 496 Cr. P. C., which is imperative to release the petitioner on bail. 32 C 80 : 8 C. W. N. 779, *contra*. 36 M. 474

—under s. 496 Cr. P. C. bail may be claimed as of right not only by one accused of a bailable offence but by any person other than a person accused of a non bailable offence who is arrested or detained without warrant by an officer in charge of a police station or appears, or is brought before a court. 6 C P. 31.

—the proceeding in which it has to be determined whether an accused person should be admitted to bail is a judicial proceeding. 6 M. 63.

—bail cannot be refused to an accused person arrested under a warrant issued under s. 114 Cr. P. C. 9 S. L. R. 158, 20 Bom. L. R. 121

—s. 496 Cr. P. C. is imperative in its terms and the court is bound to comply with its provisions. 32 C 80

spirit of the provisions of s. 496 Cr. P. C. is to prevent a suspect from apprehensions and that the court should find sureties. 96

no impediments should be placed in the way of the accused being admitted to bail. 20 Bom. L. R. 121, 6 C. P. L. R. 31.

(2) When bail should not be granted.

—a M. has no power to grant bail in cases falling under s. 409 I. P. C. 1930 Rang 335 : 1930 C. C. 1151 : 2 Bom. L. R. 532

—where an application for bail is accompanied by defamatory and irrelevant attacks on the Government officers, the court is not bound to grant bail. 15 B. 488, 22 M. 155 *Appr.* 19 B. 51 *Ref.*

—the courts have powers to delete the defamatory portions from applications presented to them. Rat. Un. Cr. 480.

—the provisions of sec. 7 (2) of the Extradition Act override the provisions of s. 496 Cr. P. C., so that a Magistrate has no power, apart from s. 8 and 8-A of the Extradition Act, to admit to bail a

to allow bail to
22 M. L. J. 357
Cr. L. J. 194

Ss. 496-502. (2) When bail should not be granted—contd.

—no bail should be taken from persons against whom 107 proceedings are contemplated. If Magistrate has reason to suspect that they would abscond then he can take personal recognizance. 11 C. W. N. 415, 36 M. 474.

—when a M. refuses to grant bail he must record his reasons. 14 C. W. N. 138 (note)

—the discretionary power of the Court to admit to bail is not arbitrary but is judicial and is governed by established principle. 51 C. 402

—in exercising the discretion under s. 498 the court should have regard to the provisions of s. 497 (1). Where the accused was kept in custody pending an inquiry into an offence under s. 307 I. P. C. and it was alleged that the accused might, if let on bail, assail the complainant, the accused should not be released on bail. 1928 Bom. 244; 30 Bom. L. R. 622. 111 I. C. 661; 29 Cr. L. J. 901.

(3) Sufficiency of bail and bail bond and fitness of surety.

—the decision as to sufficiency should not be left with the Police. 15 C. 455, 25 A. 294, A. W. N. (1898) 154, 27 A. 293, 3 C. L. J. 575, 10 C. W. N. 1027, 14 C. W. N. 49, 43 C. 1024, 20 C. W. N. 1133, 18 P. R. 1906 (Cr.), 10 C. W. N. 254 (note), 13 C. W. N. 80, 12 A. L. J. 1004.

—the Magistrate is to decide the fitness of the surety. His inquiry and refuse or accept C. 706, 43 C. 1024, 12 A. L. J.

—sureties should not be rejected only on the Police report. 29 C. 455, 10 C. W. N. 1027, 18 A. L. J. 324; 12 A. L. J. 1004, 20 A. L. J. 760, 13 A. L. J. 469, 2 S. L. R. 15, 8 S. L. R. 173, 15 Cr. L. J. 727 (A), 14 C. W. N. 709 (amendment of s. 122 Cr. P. C. has made the inquiry compulsory.)

—in rejecting surety the Magistrate must record his reasons. 37 C. 91; 14 C. W. N. 709, 44 B. 385, 13 C. W. N. 27 (note), 10 C. W. N. 1027.

—the bond must be in accordance with form 42 of the Schedule otherwise the person executing the bond incurs no liability by executing it. 1928 Lab. 318; 109 I. C. 219; 29 Cr. L. J. 491.

—a bond to secure the appearance of the accused before a Magistrate is not invalid because it was taken by another Magistrate. 2 Bom. L. R. 589.

—bail bonds executed by sureties should contain a clear statement of the conditions on which the accused before the court or officer is released before the court or officer. 10 Cr. L. J. 251.

—a bond to secure the appearance of the accused before a Magistrate is not invalid because it was taken by another Magistrate. 2 Bom. L. R. 589.

—helping the accused in conducting the defence. 16 A. L. J. 263, or giving evidence in favour of the accused, 15 Cr. L. J. 727 (A) does not disqualify a person to stand surety.

Ss. 496-502. (3) Sufficiency of bail and bail bond and fitness of surety—contd.

—previous conviction, 22 Cr. L. J. 485 (c), 25 C. W. N. 140,
 2, 7, 25 A.

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 .. of the
 surety. 44 C. 737, 8 A. I. J. 785, 20 A. 206, 15 A. L. J. 848, 1889 A.
 W. N. 129, 1895 A. W. N. 143, 8 Bur. L. T. 53, I. S. L. R. 46, 26 O.
 C. 284.

—solvency and respectability of the surety is to be considered, 16 Bom. L. R. 138, 41 B. 385, according to other authorities pecuniary test is the only test. 6 C. W. N. 593, 13 C. W. N. 159 (note), 35 C. 400, 3 C. L. J. 575, 37 C. 91, 43 C. 1024.

(4) Bond of accused and sureties.

—there can be no surety without a principal, therefore under
 .. bond for
 .. as power
 .. his own
 109 I. C.

(5) Interpretation of bail bond.

—a bail bond must be interpreted with reference to its own language if it is plain and no external evidence will be admitted to explain its conditions. 3 Punj L. R. 198.

(6) Forfeiture and cancellation of bond.

—where a surety applies for the cancellation of the bond under s. 502 Cr. P. C., it imposes upon the Magistrate the duty of issuing a warrant for the arrest of the accused. 9 Bom. L. R. 1285.

—there is nothing in s. 219 Cr. P. C., which prevents an accused person, who has forfeited his bail-bond by default of appearance from being proceeded against under s. 179 Cr. P. C., notwithstanding that his surety has paid the penalty mentioned in the recognizance. 10 W. R. 4; 1 B. L. R. 1.

—the surety is not discharged by the fact that ..

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—when the surety-bond is executed to produce the accused before the Sessions Judge, proceeding for forfeiture cannot be taken by the Magistrate. There cannot be delegation of power under s. 516 Cr. P. C. 14 C. W. N. 259; 10 Cr. L. J. 241; 2 Ind. C. 113.

—there should be an order on the surety to produce the accused on a certain day. If not, forfeiture of surety-bond is bad. 10 C. W. N. 127 (note).

Ss. 496-502. (2) When bail should not be granted—contd.

—no bail should be taken from persons against whom 107 proceedings are contemplated. If Magistrate has reason to suspect that they would abscond then he can take personal recognizance. 11 C. W. N. 415, 36 M. 474.

—when a M. refuses to grant bail he must record his reasons. 14 C. W. N. 138 (note)

—the discretionary power of the Court to admit to bail is not arbitrary but is judicial and is governed by established principle. 51 C. 402

—in exercising the discretion under s. 498 the court should have regard to the provisions of s. 497 (1). Where the accused was kept in custody pending an inquiry into an offence under s. 307 I. P. C. and it was alleged that the accused might, if let on bail, assail the complainant, the accused should not be released on bail. 1928 Bom. 244 : 30 Bom. L. R. 622 : 111 I. C. 661 : 29 Cr. L. J. 901.

(3) Sufficiency of bail and bail bond and fitness of surety.

—the decision as to sufficiency should not be left with the Police 15 C. 455, 25 A. 294, A. W. N. (1898) 154, 27 A. 293, 3 C. L. J. 575, 10 C. W. N. 1027, 14 C. W. N. 49, 43 C. 1024, 20 C. W. N. 1133, 18 P. R. 1906 (Cr.), 10 C. W. N. 254 (note), 13 C. W. N. 80 12 A. L. J. 1004.

—the Magistrate is to decide the fitness of the surety. His discretion is unfettered. 13 C. W. N. 80, 44 C. 737, 12 A. L. J. 1004

—he should make satisfactory inquiry and refuse or accept surety only on valid grounds 42 C. 706, 43 C. 1024, 12 A. L. J. 1004, 10 C. W. N. 1027, 41 C. 764

—sureties should not be rejected only on the Police report. 29 C. 455, 10 C. W. N. 1027, 18 A. L. J. 324; 12 A. L. J. 1004, 20 A. L. J. 760, 13 A. L. J. 469, 28 S. L. R. 15, 8 S. L. R. 173, 15 Cr. L. J. 727 (A), 14 C. W. N. 709 (*amendment of s. 122 Cr. P. C. has made the inquiry compulsory*)

—in rejecting surety the Magistrate must record his reasons, 37 C. 91 : 14 C. W. N. 709, 44 B. 385, 13 C. W. N. 27 (note), 10 C. W. N. 1027.

—the bond must be in accordance with form 42 of the Schedule otherwise the person executing the bond incurs no liability by executing it. 1928 Lah. 318 : 109 I. C. 219 : 29 Cr. L. J. 491.

—a bond to secure the appearance of the accused before a Magistrate is not invalid because it was taken by another Magistrate. 2 Bom. L. R. 589.

—bail bonds executed by sureties should contain a clear promise for the production of the accused before the court or officer who is to take measures. 36 C. 749 : 10 Cr. L. J. 251.

—where the bonds are defective in some material points, a forfeiture ordered by the Magistrate is illegal. 5 C. W. N. 44.

—helping the accused in conducting the defence. 16 A. L. J. 263, or giving evidence in favour of the accused, 15 Cr. L. J. 727 (A) does not disqualify a person to stand surety.

Ss. 496-502. (B) Jurisdiction of H. C., the S. C. and D. M.—*confd.*

—the Sessions Judge has power to grant bail on a reference under s. 123 (2) 50 C. 969.

—a Sessions Judge has wide powers under s. 493 Cr. P. C. 51 A. 603: 116 I. C. 748: 1929 All. 320: 39 Cr. L. J. 697: 27 A. L. J. 585.

—a Sessions Judge has no jurisdiction to release an accused, after convicting him, on bail pending his appeal to the High Court, 4 B. L. R. 55, but he can grant bail to any person who has been wrongly convicted by the Magistrate and whose case he can either deal with himself or can refer to the H. C. 4 Bom. L. R. 55, similarly it has been held that the provisions in s. 496 Cr. P. C. that bail can be granted only to a person other than a person accused of a non-bailable offence does not apply to the court of Sessions acting under s. 493 Cr. P. C. 1929 All. 614: 27 A. L. J. 927: 117 I. C. 99: 30 Cr. L. J. 718 1929 Cr. C. 193.

—after having heard the Rule and discharged it the H. C. becomes *functus officio* and it has no jurisdiction under s. 493 to
 to appeal may be made
 petition is disposed of. 50
 I. 169: 25 Cr. L. J. 672,
 4 Bom. L. R. 55 *Ref. 24*

M 61 *Dist*

—though the H. C. is empowered under s. 493 to admit an accused to bail in any case, it must be interpreted as being controlled by s. 497 1928 Sind 142: 109 I. C. 118: 29 Cr. L. J. 470

—the H. C. can under s. 498 grant bail in cases pending anywhere in the Presidency 55 M. L. J. 690: 28 L. W. 634: 52 M. 52: 113 I. C. 412 1929 Mad. 29.

—the H. C. cannot interfere under s. 497 or s. 498 when there is no order by any court with regard to the person in remand. 44 C. L. J. 134: 97 I. C. 945: 27 Cr. L. J. 1185.

—the High Court would be very cautious in interfering with the discretion of a Magistrate about bail under s. 497. Rat. Un. Cr. 892

—the High Court alone can grant bail when accused is committed to custody by Coroner 31 C. 1.

—where the Sessions Judge after considering the evidence before him admits the accused to bail, the High Court will not go behind the finding and discharge the bail. 10 M. L. J. 411: 5 A. L. J. 419: A. W. N. (1908) 195: 8 Cr. L. J. 49.

—a single Judge of the High Court may order the release of prisoners on bail pending the hearing of an appeal. W. R. Sp 19.

—in granting bail under s. 498, the H. C. and Sessions Courts have unlimited jurisdiction and this can be exercised soon
 police, even before the case
 86, 5 A. L. J. 419: A. W. N.

Sa. 496-502. (6) Forfeiture and cancellation of bond—contd.

—where the surety-bond contained "We shall produce the accused at the Sessions Court whenever called upon to do so" but did not specify the time and place in accordance with s. 499, the form was not illegal. 1928 Cal. 261.

—before it can be declared that a surety-bond is forfeited under s. 514 Cr. P. C., there must be a formal finding based on evidence taken in the presence of the surety. 25 C. 440.

—bail-bonds by sureties to be responsible for the appearance of the accused at one stage or before a particular court, cannot be forfeited for the non-appearance of the accused at another stage. 9 W. R. 36, 36 C. 749; 10 Cr. L. J. 251, 30 C 107; 6 C. W. N. 885, 8 Punjab. L. R. 198

—but where a surety undertook to produce the accused before a certain M. but subsequently he was required to produce the accused in connection with another offence on his failure to do so the security was correctly forfeited. 49 A. 825; 102 I. C. 554. 28 Cr. L. J. 586. 1927 All 831.

—where a person is ordered to be present on a certain day to show cause why his bond should not be forfeited and he fails to be present on that day, the proceedings taken by the Magistrate on the day following in his absence, are not vitiated. 2 Bom. L. R. 589.

—the Magistrate can cancel any bail allowed to an accused and direct him to surrender, if it appears on further evidence that a case is made out against him. 36 C 174; 10 C. W. N. 1093

—a District M. cannot cancel a bail and order re-arrest of the accused released on bail by a subordinate M. 4 Bur. L. T. 70. The H. C. can interfere, 22 B. 549, and in revision only. 10 M. L. J. 411; 5 A. L. J. 419

—a surety bond cannot be forfeited without compliance with the provisions of s. 502 (2) 95 I. C. 768; 27 Cr. L. J. 848.

(7) Discharge of sureties.

—where a surety applies for the cancellation of the bond under s. 502 Cr. P. C. there is no other alternative left to the Magistrate than to cancel it. The application need not be heard on merits. 9 Bom. L. R. 1285.

(8) Jurisdiction of H. C., the S. C. and D. M.

—the order or bail made by a Magistrate is not revisable by a District Magistrate. If the latter considers the order wrong, he can refer it to the High Court. 22 B. 549.

—the Court has ample jurisdiction to revise the order of bail according to the change of circumstances proved before it. 1925 Mad. 1224; 23 L. W. 156.

—although District Judge cannot release a person on bail pending an appeal, he may suspend the sentence pending the appeal. 3 W. R. 57.

—the Sessions Court had power under s. 390 (Act X of 1872) to admit a person to bail committed for trial for a non-bailable offence. 1882 A. W. N. 234.

Ss. 496-502. (B) Jurisdiction of H. C., the S. C. and D. M.—*contd.*

—the Sessions judge has power to grant bail on a reference under s. 123 (2). 50 C. 969.

—a Sessions Judge has wide powers under s. 498 Cr. P.C. 51 A. 603: 116 I C. 748: 1929 All. 320: 30 Cr. L. J. 697: 27 A. L. J. 595.

—a Sessions Judge has no jurisdiction to release an accused, after convicting him, on bail pending his appeal to the High court, 4 B. L. R. 55, but he can grant bail to any person who has been wrongly convicted by the Magistrate and whose case he can either deal with himself or can refer to the H. C. 4 Bom. L. R. 55, similarly it has been held that the provisions in s. 496 Cr. P. C. that bail can be granted only to a person other than a person accused of a non-bailable offence does not apply to the court of Sessions acting under s. 498 Cr. P. C. 1929 All. 614: 27 A. L. J. 927: 117 I. C. 99: 30 Cr. L. J. 718. 1929 Cr. C. 193.

—after having heard the Rule and discharged it the H. C. has no jurisdiction under s. 498 to leave to appeal may be made which petition is disposed of. 50 81 I C. 169: 25 Cr. L. J. 672. 15 P. R. 1908, 15 A. 310, 22 B. 528: 15 C. 608, 4 Bom. L. R. 55 *Ref. 24 M. 61 Dist*

—though the H. C. is empowered under s. 498 to admit an accused to bail in any case, it must be interpreted as being controlled by s. 497 1928 Sind. 142: 109 I C. 118 29 Cr. L. J. 470

—the H. C. can under s. 498 grant bail in cases pending anywhere in the Presidency 55 M. L. J. 690. 28 L. W. 684 52 Af. 52: 113 I. C. 412 1929 Mad. 29

—the H. C. cannot interfere under s. 497 or s. 498 when there is no order by any court with regard to the person in remand. 44 C. L. J. 134: 97 I C. 945: 27 Cr. L. J. 1185.

—the High Court would be very cautious in interfering with the discretion of a Magistrate about bail under s. 497. Rat. Un. Cr. 892

—the High Court alone can grant bail when accused is committed to custody by Coroner 31 C. 1

—where the Sessions Judge after considering the evidence before him admits the accused to bail, the High Court will not go behind the finding and discharge the bail, 10 M. L. J. 411: 5 A. L. J. 419: A. W. N. (1908) 195. 8 Cr. L. J. 49

—a single Judge of the High Court may order the release of prisoners on bail pending the hearing of an appeal. W. R. Sp. 19.

—in granting bail under s. 498, the H. C. and Sessions Courts have unlimited judicial discretion, and this can be exercised soon after the arrest of the accused by the police, even before the be sent up to a Magistrate. 7 Burma 86, 5 A. L. J. 419: A. W. (1908) 195: 8 Cr. L. J. 49.

Ss. 496-502. (8) Jurisdiction of H. C., the S. C. and D. M.—contd.

the accused should be therefore cognizable

under s. 498 are not proper provision of

the law. 44 C. 20.

when the accused applied to the Advisory Council and obtained not the sentence, jurisdiction to release

Ss 503-508. (Of commissions for the examination of witness.)

—the issue of commission in criminal court is entirely in the discretion of the court and it is a most unsatisfactory course of proceeding and one dangerous to the interests of the prisoner. 8 C. 896, 1923 Lah. 73, 5 A. 92, 6 A. 224.

—before acting under s. 506 Cr. P. C. the Magistrate must be satisfied that the evidence of the particular witness is necessary for the ends of justice. 33 C. W. N. 1088.

—sub-sec.(1) of sec. 503 empowers a party to apply for a commission at any time, in the course of the trial. 19 C. 113, 19 B. 749, p. 756.

—commission cannot be issued in Presidency Towns as there is no Dt. M. or M. of the 1st class. 24 C. 551, 16 C. 238

—no commission can be issued out of British India. 5 Bom. 338 F. B., 10 Cr. L. J. 571.

—the provisions of sub-sec (3) of sec 503 are mandatory. witness in a Native State return it unserved on the 29 Cr L. J. 202 : 106 I. C.

—Nab States to compell the 18 I. C. 643 : 11 Lah L. J.

—expense of or inconvenience to witness is no ground for issuing commission. 6 A. 224.

—this provision of this sec. should be sparingly used in extreme cases of delay, unnecessary expenses or inconvenience. 5 A. 92.

—examination of witness by commission is not a satisfactory mode of procedure. The discretion should be exercised sparingly and in real cases of hardship and inconvenience. 91 I. C. 393 : 1926 Sind 124 : 27 Cr. L. J. 89.

—when the complainant is a *pardanashin lady*, her position is not the same as that of an ordinary lady witness. It is the right and privilege of the accused to have her evidence taken in his presence in court. 5 A. 92, 12 A. 69 *contra*, 2 Weir 659, 15 C. 775, 4

Ss. 503-508. (Of commissions for the examination of witness)—*contd.*

C. 20. In 12 A. 69 case the H. C. directed the M. to make arrangements so as to take the evidence of the *pardanashin lady* either in an empty court-room in the presence of himself, the accused and the pleaders for the prosecution, or if no empty court-room was available in his own private room or some other rooms in the court-building.

—where in a prosecution under s. 493 I. P. C. the identity of the woman alleged to have been enticed is in question and the woman is a *pardanashin lady* the better course is, instead of issuing commission, to examine her in chambers. 1930 Sind 56 : 31 Cr. L. J. 115 : 120 I. C. 518 : 1930 Cr. C. 91, 4 S. L. R. 257 *Ref.* 1926 Sind 124 *Ref.*

—the term of the sec. is very wide, they refer not only to an enquiry or trial but to any other proceeding. It authorises the examination of any witness and the complainant is a witness. 18 C. W. N. 1020.

—a commissioner is not a court for the purposes of granting sanction under sec. 195, (1). 11 C. W. N. 909 : 6 Cr. L. J. 160.

—fresh objection to the admissibility of a document produced before the commissioner may be taken when it is tendered before the court. 9 C. 939.

—an additional Dt. M. authorised to exercise all the powers of a Dt. M. as contained in Sch. III Part V (18) is empowered to issue a commission under s. 503 for the examination of a witness. 73 I. C. 510 : 24 Cr. L. J. 622.

—the sec. relates to the issue of commission and does not empower the M. himself to go to the house of a witness to examine him. 2 S. L. R. 8.

Ss. 509-512. (Special rules of evidence.)

Deposition of medical witness, s. 509.

—the report of a medical officer not given on oath is not evidence and cannot be used under this sec. 6 C. W. N. 98, 4 C. 129, 8 C. 211 : 10 C. L. R. 11, 12 W. R. Cr. 25.

—when a medical officer is called in the S. C. his deposition before the M. may be put in. 8 C. 739 but not unless he resiles from it. 4 C. W. N. 49.

—the medical officer may refresh his memory by referring to

—the medical officer must be examined in presence of the accused, 9 A. 720, 1 C. 739, 18 C. 129, 10 A. 174, and may be examined on commission. 18 C. 129.

—a copy of a letter from the Civil Surgeon containing expressions of his opinion is inadmissible in evidence and it is extrajudicial. 8 C. 211 : 10 C. L. R. 11, 12 W. R. Cr. 25.

—the substance of a report of a subordinate medical officer is no evidence. 11 W. R. Cr. 2.

Ss. 509-512 Deposition of medical witness, s. 509—contd.

—medical evidence should not be too much relied on. 11 W. R. Cr. 25, 1889 A. W. N. 74.

—a certificate given by a medical man is not admissible in evidence unless he proves it. 24 Bom. L. R. 803.

Report of chemical examiner, s. 510.

—the original report and not the copy should be put in evidence. 15 W. R. Cr. 49; 6 B. L. R. Ap. 122

—the report must be signed by the chemical examiner himself. 2 Weir 661.

—where there was strong direct evidence as to the place of murder but no blood was detected by the chemical examiner in the earth, leaves and grass taken from the place, the negative evidence of the chemical examiner was not sufficient to rebut the direct evidence. 28 C. W. N. 561; 83 I. C. 485

—S. J. is bound to warn the jury that before using the chemical examiner's report they must be satisfied on the evidence that the substances examined were in fact what they were said to be. 18 C. W. N. 180.

Previous conviction or acquittal how proved, s. 511.

—previous convictions should be proved by copies of judgments or by any other documentary evidence, 28 C. 689; 5 C. W. N. 670, 26 C. 49, 1881 A. W. N. 144, 15 W. R. 53, and identity must be proved. 1881 A. W. N. 144, 15 W. R. 53.

—the certified extract contemplated by cl. (a) of s. 511 is "a copy of the sentence order." Certified extracts from the punishment register are not sufficient. 11 C. P. L. R. Cr. 5

—mere *laisfat* from a record office is not sufficient. 15 W. R. Cr. 53; 6 B. L. R. Ap. 151.

—in case of some evidence of identity in the record the accused may be asked to explain it under s. 342, and if he makes admissions, further proof is unnecessary. 5 N. L. R. 163; 9 Cr. L. J. 56.

—comparing finger prints taken in Court with the finger prints in a sheet of paper containing previous convictions of the accused by a finger print expert is not proving previous conviction. 21 C. W. N. 469; 18 Cr. L. J. 462, 3 N. L. R. 1; 5 Cr. L. J. 220, 6 C. P. L. R. 3, 32 C. 759.

—before conviction it is desirable and necessary that if there are previous convictions they should properly be proved. 17 Cr. L. J. 179

—previous convictions must be proved strictly and in accordance with law. 43 C. 1128.

—the court should not be satisfied with the admission of the accused. It must be proved by one of the modes laid down in sec. 511 Cr. P. C., and the dates and particulars thereof should be set out in the judgment with precision. 1929 Lah. 768; 30 Punj. L. R. 530; 119 I. C. 429; 30 Cr. L. J. 1082; 1929 Cr. C. 465.

Ss 509-512. Record of evidence in absence of accused, s. 512.

—in a case whether it is proved that an accused person has absconded, evidence can be recorded against him under s. 512, in his absence, only if the fact of absconding is alleged and established. 10 C. 1097, 21 W. R. Cr.

... it must be proved that the evidence or that his attendance in amount of delay, expense

—when a witness had been examined under s. 512 and appeared in court at the trial but could not remember the details of the occurrence he could not be considered as incapable of giving evidence within the meaning of the sec. In such a case the court should refresh the memory of the witness by reading out the deposition and then ask him the details. 76 I. C. 31; 25 Cr. L. J. 95; 1924 Lah. 605.

—when the accused has absconded it is the duty of the M. to record the evidence under this sec. 2 Bom. L. R. 707.

—all that is necessary for the requirements of s. 512 is the proof that the accused absconded and not any finding by the court to that effect. 6 Lah. 489; 26 Punj. L. R. 845; 92 I. C. 423; 1916 Lah. 82.

—in a murder case such previous statements of witness cannot be treated as evidence in the Sessions Court if the witness is living and can be produced. 157 P. L. R. 1911; 10 Ind. C. 119; 12 Cr. L. J. 214.

—evidence of co-accused taken in the absence of the accused is not admissible in evidence. 8 A. 672.

—evidence purporting to have been recorded under this sec. cannot be used against the accused unless it can be shown that before such evidence was recorded it was proved to the satisfaction of the court that the accused had absconded and that there was no immediate prospect of arresting him, 38 A. 29, but evidence so recorded was held to be admissible where there was evidence on the record from which the M. might have reasonably inferred that there was no immediate prospect of their arrest. 41 A. 60, 38 A. 29 Dist.

—when during the trial of some accused two witnesses referred in the course of their examination to a person who was absconding and who is subsequently tried, the statements of those two witnesses cannot be read at the subsequent trial, in other words evidence given at a trial for another purpose cannot by an *ex post facto* taken under a deposition. 16 I. C. 122;

or an inquiry
366: 81 I. C.

SS. 513-516. (Provisions as to bonds).

—s. 514 contemplates bonds given to court, it does not include receipts given to police. 2 O. L. J. 64 (note).

—an order for confiscation of property cannot be made under sec. 514, 9 C. W. N. 397.

—where the accused commits suicide the surety is discharged from liability. 16 C. W. N. 550, 18 Bom. L. R. 683; 17 Cr. L. J. 393.

—on breach of bond both principal and surety are liable to pay the penalty of their respective bonds. 13 C. W. N. 555.

—where the accused entered into a bond to appear before the Dt. M. and before the S. J., failure to attend before the Court of Second Additional M. to whom the case was transferred, did not justify forfeiture. 2 Rang. 581; 83 I. C. 933; 26 Cr. L. J. 389.

—s. 514-B provides that when the person required to execute a bond is a minor a bond executed by the surety or sureties only may be accepted but there is no such provision in case of a major. 1923 Lah. 318; 109 I. C. 219; 29 Cr. L. J. 491.

—a surety for appearance of the accused in a case under s. 110 Cr. P. C. should be exonerated from his security where the person for whom he had stood surety was unable to appear on account of "an act of law." It is a good defence to an action on recognisance for a person's appearance to answer a criminal charge that he has been arrested and committed to jail in another country. 86 I. C. 657; 1925 Pat. 889. 4 P. 259. 6 Pat. L. T. 397 (16 C. W. N. 550, 37 M. 156, 18 Bom. L. R. 183) *Ref.*

—an order of forfeiture of surety bond for good behaviour need not be passed at the same time as the conviction of the principal accused. 92 I. C. 742; 1926 Sind 189; 27 Cr. L. J. 316.

—where the surety fails to produce the accused owing to illegal order passed by the M. which the surety was not bound to carry out and where there is no connivance or negligence on the part of the surety he cannot be penalised. 49 A. 825. 28 Cr. L. J. 586; 102 I. C. 554.

—where the failure of the sureties to produce the accused was not intentional or due to negligence but due to justifiable misunderstanding the order of forfeiture of bail-bond is not legal. 1929 Pat. 658; 1929 Cr. C. 444.

—where a Magistrate obtains a bail-bond for the appearance of the accused before another court outside his jurisdiction and it transpires that the M. was not competent to do so the bailbond is a nullity and no proceedings against the accused under s. 514 can be taken in respect of such bond. 1929 All. 914. 1929 Cr. C. 612; 52 All. 94.

—where the court did not in fact sit on the date when the surety was asked to produce the accused neither the accused nor the surety had any obligation under the bond. 9 Lah. L. J. 111; 1929 Lah. 20; 105 I. C. 108; 29 Punj. L. R. 231; 28 Cr. L. J. 1020.

Ss. 513-516, (Provisions as to bonds)--contd

—termination of the period of the bond before the proceedings for the breach thereof were finished, was no bar to the prosecution of the case. 44 All 657; 20 A. L. J. 692; L. R. 3 A. 129; 1932 All. 333; 68 I. C. 847; 23 Cr. L. J. 623.

—agreement by the principal to indemnify surety is illegal and whole object of the provision
1035

—under the Cr. P. C. to take a surety-bond for the production of any person before the Police and such a bond is *ab initio* void, and the person who has given such a bond, cannot be called upon to pay a penalty for its breach 81 I. C. 200; 20 Cr. L. J. 712, 11 C. 27 Fol

—the bond contemplated by Ss. 112 and 118 Cr. P. C. is one bond for one amount and is discharged on forfeiture by the payment of the amount due either by the principal or the surety 6 L. L. J. 478, 5 L. 118, 26 I. R. 1294, 12 Cr. L. J. 494 fol 36 C. 563 Dist

—there can be no forfeiture of a bailbond except on its own terms. 11 Pat. L. T. 578, 1930 Pat 519

—after a conviction under a 323 I. P. C. a bond for good behaviour can be forfeited 4 Lah 462

—liability under a bond executed in trial court continues till the final order in appeal even if the order of the trial Court is reversed 1928 Rang 310; 114 I. C. 692 20 Cr. L. J. 346, 5 Rang 496 fol, 5 Rang 492 Dist

—before a warrant is issued for the attachment of the property of the surety he must be called upon to show cause, 15 W. R. 82. A summary order without notice is bad 9 W. R. 4.

—two steps are necessary: first it must be satisfactorily proved that the bond has been forfeited and the court must record the grounds of such proof, secondly, the court shall call upon the person bound by the bond either to pay the penalty or to show cause why it should not be paid 1925 Cal 261

—s. 514 lays down that it must be proved to the satisfaction of the court that the bond has been forfeited and the court should record the grounds of such proof and then call upon the person bound down to show cause. Proceedings under s. 514 are of the nature of civil proceedings. 8 Pat. L. T. 251 67 I. C. 230 23 Cr. L. J. 478, 1929 Pat 643. 1929 Cr. C. 371, 11 B. H. 170, 10 C. L. R. 571

—where the M. proceeding to forfeit a surety-bond issued notice to the surety and upon his non-appearance did not record evidence but relied upon the evidence recorded before issuing notice and passed an order of forfeiture of the surety bond, the procedure was illegal and must be set aside 54 C. 134 44 C. L. J. 170; 27 Cr. L. J. 1293; 1926 Cal. 1221

—when penalty is not paid the person triable can be arrested if it cannot be recovered by attachment and sale of his moveable 1928 Rang. 310.

Ss. 513-516. (Provisions as to bonds)—contd.

—a penal provision in a bond should not be enforced specially when it is inserted not in accordance with the Magistrate's order. 1928 Rang. 310 : 114 I. C. 682 : 30 Cr. L. J. 346.

—a bond to produce certain hullocks and in failure to pay Rs. 1000 was held to be legal where the M. ordered the surety to pay Rs. 100 out of Rs. 1000 provided in the bond. 1929 Lah. 658 : 30 Cr. L. J. 527 : 115 I. C. 765 : 1929 Cr. C. 215.

—passing an order of forfeiture regarding a bond under s. 107 Cr. P. C. without notice to the party amounts to failure of justice. 1925 Oudh 51.

—a person whose estate is under the management of the Manager, Encumbered Estates, cannot enter into any contract involving him in any pecuniary liability and this applies to a surety bond 83 I. C. 897.

—the liability of the surety extends to the particular offence for which he stands security and for any other offence 25 C. L. J. 131 : 76 I. C. 227 : 1924 Lah. 622.

—the fact that the absence of the accused was due to an arrangement between the accused and the complainant cannot exonerate the surety from the liability of having knowledge of the agreement but he need not be called on to pay the full amount. 97 I. C. 672 : 27 Cr. L. J. 1152 : 1926 Lah. 636 : 27 Punj. L. R. 646.

—when in sentencing an accused in good behaviour case no step is taken to confiscate the security the court is not competent to take such steps in a subsequent and separate proceeding 75 I. C. 692 : 25 Cr. L. J. 4 : 1924 Lah. 680.

For other cases, see Bail and Bailbonds etc.

Ss. 516 A, 517. (Order for disposal of property).

N. B.—The amendment has settled many disputes as to the application of the section. For the word "disposal" the words "by destruction, confiscation, or delivery to any person claiming to be entitled to possession thereof or otherwise" have been substituted. By adding sub-sec. (4) provision has been made to deliver any property on the execution of bond and by the enactment of s. 516 A. provision has been made for the custody and disposal of property pending trial or inquiry.

Applicability of the sec.

—before the amendment, a criminal court had no power to order confiscation of properties forming the subject of the offence or in respect of which an offence appeared to have been committed. 28 C. W. N. 1094 : 1924 Cal. 1040.

—restitution proceedings are proceedings of a quasi civil nature and an *ex parte* order therein is valid 1928 Rang. 310.

• 517 has no application to •

shlo. property. 18 C. W.

and a third person claims
applies for the disposal

Applicability of the sec.—contd.

of the property. In such a case, the general rule, that property taken under the authority of the court for a particular purpose should, on the fulfilment of that purpose, go back to the custody whence it was taken, shall apply. 29 M. 375; 4 Cr. L. J. 233, 9 M. 448, 14 C. 834, 24 C. 499, 17 B. 748, 22 B. 844, 1 B. 630, 14 C. P. 60.

—by the addition of the words "or in its custody" a M. has no power to pass an order under sec. 517 though no offence is committed in respect of the property 34 C. 347.

—an order for the disposal of property regarding which an offence has been committed can only be made upon the conclusion of the enquiry or trial and not on the application of a person subsequently made after the trial is over. 4 Lab. 460, 74 I. C. 708; 24 Cr. L. J. 801

—property which has passed out of the custody of the court cannot be touched by an order under this sec. 1921 Pat 128; 3 Pat. L. T. 228; 65 I. C. 494; 23 Cr. L. J. 110.

—an order under sec. 517 ought to be made at the time of passing judgment. It is necessary that the order should follow a fresh inquiry. 18 Cr. L. J. 469

—an order under s. 517 should be made only upon the conclusion of the trial and not long after it 24 Cr. L. J. 804.

—an order under s. 517 can be made only after the judgment in the case and within a reasonable time thereafter. 89 I. C. 973; 26 Cr. L. J. 1453.

—the essential of s. 517 is that property or document must be proved to have been used in the commission of the offence. Where currency notes were found on the person of a man convicted for importing opium into British India in contravention of the Opium Act, but it was held that no irresistible inference was possible that they represented payments of the imported opium, they should not be confiscated. 1924 All. 618; 81 I. C. 103; 25 Cr. L. J. 615.

—the expression "property regarding which an offence has been committed" includes movable property regarding the possession of which a quarrel has begun or a riot has begun whatever may be the offence that might ultimately be committed in the course of the quarrel or fight. 1928 Med. 194; 54 M. L. J. 312; 27 L. W. 132; 51 M. 636; 108 I. C. 65; 29 Cr. L. J. 322.

—when the pledgor dishonestly removes from the possession of the pledgee certain goods and sells them to a third person and the pledgor is convicted for itself, it is open to the court to pass an order under s. 517 directing the stolen articles to be returned to the pledgee. 71 I. C. 702; 24 Cr. L. J. 233; 1923 Cal 598.

—the jurisdiction of the criminal court is confined to an order at the conclusion of the trial for the disposal of the property which has been stolen and which is before it in any criminal proceeding. 1924 Cll. 189.

Order of forfeiture.

—order of disposal under this sec. includes an order of forfeiture or confiscation. *Ratanlal 492*. This view has been given effect to by the amendment which shows the inaccuracy of the rulings reported in 5 N. L. R. 59, 1907 P. W. R. 37, 5 P. L. J. 321, 34 C. 986.

—but confiscation order cannot be made without first giving notice to and hearing the person to whose prejudice the order is made. 17 Cr. L. J. 207 (Bur)

When the decision of the civil court is required.

—in case of question arising as to who is the rightful owner which can only be determined by the civil court the M. should not pass orders under this sec. but he should order deposit of the articles with an officer of the court pending the decision of the civil court 19 Cr. L. J. 788.

—when rival claims are put forward to property by different parties the proper procedure is to lend the property in court pending the decision of a civil court as regards the title to it. 28 C. W. N. 1094. 84 I. C. 414: 26 C. L. J. 300: 1924 Cal. 1140, 6 Lah. L. J. 213, 1924 Lah. 588: 86 I. C. 273: 26 Cr. L. J. 737.

—a proceeding under s 512 (1) Cr. P. C. is neither an enquiry nor a trial within s. 517 Cr. P. C. It is not the function of a criminal court to decide nice questions involving principles of civil court. 2 Bur. L. J. 85: 1922 Rang. 248.

—when a question of *bona fides* and of title by purchase or otherwise clearly arises, the duty of the criminal court is to leave the complainant to his remedy in civil court. 74 I. C. 708. 24 Cr. L. J. 804 1924 A. 189.

—when a property produced before a criminal court is not proved to have been taken at an alleged dacoity or to belong to the complainant, the court ought to deliver it to the person who produced it leaving the complainant to his remedy in the civil court. 6 Lah. L. J. 213: 1924 Lah. 588

—where the accused was acquitted of the charge of abetment of theft of an animal but the animal was handed over to the complainant until the adjudication of the Civil Court, held that the proper order was to restore the animal to the possession of the accused. 54 C. 283: 1927 Cal. 532: 102 I. C. 482. 28 Cr. L. J. 546.

—where the accused is acquitted from the charge of cheating the property should be restored to him and not to the complainant. 95 I. C. 933: 1926 Cal. 1018: 27 Cr. L. J. 853

—when the ownership of the seized property is doubtful the property should be returned to the person from whom it was seized unless there are special circumstances. 50 M. 916: 104 I. C. 719: 1927 Mad. 797: 28 Cr. L. J. 879.

—as property to currency note passes by mere delivery a stolen currency note should be returned to the innocent third party from whom it was recovered. *above case*.

Miscellaneous cases.

—joint delivery on joint receipt is not bad. 7 M. L. T. 179; 11 Cr. L. J. 138

—magisterial control ceases with the delivery of the property. 1897 A. W. N. 26, 3 Pat. L. T. 228; 65 I. C. 494; 23 Cr. L. J. 110.

—proceedings under ss 109 and 110 fall within the words "inquiry" and "trial" and M. can order confiscation of property produced before him in the absence of proof that any offence was committed with respect to it. 42 M. 9; 20 Cr. L. J. 135.

—where the accused assaulted the complainant and dispossessed him of a bungalow and its contents, it was the duty of the M. to pass order under ss 517 and 522 directing restoration of the bungalow and its contents to the party dispossessed. 36 C. 44; 13 C. W. N. 77.

—an offence under s 124 A. I. P. C. consists in publication. It cannot be said that a press is used for commission of an offence under s 124 A. I. P. C. even though it was used for printing seditious matters. 34 C. 986; 11 C. W. N. 1046; 4 Cr. L. J. 293, 37 P. W. R. 1907; 6 Cr. L. J. 411; 5 N. L. R. 59; 9 Cr. L. J. 539.

—under s 517 the criminal court cannot direct forfeiture of property *abovo case*, but the law has been changed by the amendment.

—in the absence of any inquiry or criminal proceeding the M. cannot pass any order directing delivery of property: 6 C. L. J. 707; 6 Cr. L. J. 402; 5 C. L. J. 229; 5 Cr. L. J. 147.

—where in a case under s 145 the M. ordered boundary marks to be laid down defining the possession of the respective parties and it was contended that such order was authorised by sec. 517 held that this sec. had no application as the property was not in the custody of the court. 27 A. 300, *contra*. 14 C. W. N. 79 (note).

—in cancelling proceedings under sec. 145 (1) the M. has no jurisdiction to allow one of the parties to reap the crops to the exclusion of the other. 3 C. L. J. 573; 3 C. L. J. 466.

—when an order of return of property is passed by a stationary Sub-Magistrate only the Dt. M. and not the Subdivisional M. has the power to modify the order. 42 M. L. J. 40; 30 M. L. T. 251; 67 I. C. 339; 23 Cr. L. J. 387.

—where the trying M. acquitted the accused charged with theft of a drum and restored the drum to the accused the Dt. M. could not set aside the order of restoration as no appeal or revision lay with him. 46 A. 623; 22 A. L. J. 505; 81 I. C. 992; 25 Cr. L. J. 1168.

—where the accused was acquitted of a charge of criminal misappropriation but the trying court directed the property to be returned to the complainant, the Sessions Court could not, in appeal interfere with the order. 1928 Rang. 240; 111 I. C. 878; 6 Rang. 259.

—where a Sewing Machine Company had given a sewing machine to a person to be disposed of for money, the Company will not be entitled to the assistance of the criminal court, in recovering it from a person to whom it was so disposed of. 81 I. C. 163; 25 Cr. L. J. 675, 27 M. 424, 4 L. B. R. 25 *fol.*

S. 520. (Stay of order under ss. 517-519).

—illegal orders passed under s. 517 are liable to be set aside under this sec. 3 C. L. J. 513; 3 C. L. J. 466.

—the words "court of appeal" in this sec. merely imply the court to which appeals would ordinarily lie, and do not mean that an appeal must be in the particular case. 96 P. L. R. 1911; 11 Ind. C. 584; 12 Cr. L. J. 400, 9 B. 131. *Contra.* 42 B. 664; 19 Cr. L. J. 597.

—the words "say court of appeal" in s. 520 refers to the Dt. Magistrate alone and not to the Sub-Divisional Magistrate who ordinarily hears appeals from sub-magistrates in his charge. 1928 M. W. N. 557 F. B.

—the court designated in the section is given special jurisdiction to pass what orders it thinks proper, it is not necessary to read into the section the provisions regarding limitation in appeals. 50 M. 916; 104 I. C. 719; 1927 Mad. 797; 28 Cr. L. J. 879.

—when the sentence is passed by first class M. and is confirmed by the S. J. on appeal, the D. M. cannot interfere under this sec. with the order of disposal of property. 33 B. 253; 13 Bom. L. R. 131; 9 Ind. C. 947; 12 Cr. L. J. 169.

—this sec. gives full power to an Appellate Court to pass an order under s. 517. 35 A. 374, 1928 Lah. 567; 111 I. C. 314; 29 Cr. L. J. 810; 10 Lab. 187.

—when an Additional Dt. M. is invested by the Local Govt. with the powers of court of revision he is competent to make any consequential order as to the disposal of the property. 1930 Mad. 769; 1930 Cr. C. 895, 1928 M. W. N. 557 F. B. *Explained, and Dist.* 1928 M. W. N. 633 *Dist.*

—pass any just order as to disposal

—orders cannot be passed under this sec. 27 Cr. L. J. 574.

—an order by the M. refusing to revise an order in the *Malkhana* Register is an order under this sec. and can be revised by the H. C. either under this sec. or sec. 439. 18 C. W. N. 959.

—quittal did not say anything about the successor in office storing the property. 43

—where a Subdivisional M. decides an appeal against a conviction it is competent to him to make an order under s. 520 Cr. P. C. for the disposal of the property concerned, 46 M. 165; 32 M. L. T. 104; 44 M. L. J. 56; 71 I. C. 514; 24 Cr. L. J. 162.

—no period of limitation is prescribed for an application to the appellate court by an accused who has been acquitted, for the disposal of property. 4 Lab. 49; 73 L. C. 937; 24 Cr. L. J. 413.

—an appellate court under s. 520 Cr. P. C. has power to modify, alter or annul an order made under s. 517 or make further order that may be just. In case of complication it should be left to the civil court. 21 A. L. J. 577.

S. 520. (Stay of order under ss. 517-519)—contd.

—where no appeal has been filed from conviction by a subordinate court, the Dt. M. has got jurisdiction to interfere as a court of revision under s. 520 with an order passed by trial court under s. 517. 1 Rang 199 74 I. C. 1050 : 24 C. L. J. 858.

—in the case of an acquittal by the trial court both the Dt. M. and the S. J. have, as courts of revision, power to interfere with the order of the trial Court passed under s. 517 regarding the disposal of property 1929 Rang. 97. 115 I. C. 901 : 7 Rang. 345 : 30 Cr. L. J. 540 F. B., 6 Rang 259 1928 Rang. 240 : 11 I. C. 878, overruled 1923 Rang. 227, 3 C. 379, 2 M. 448 apprd.

—a 520 does not empower a Session Judge to vary the order of a Sub-divisional M. declining to direct the restoration of property to the accused, on his acquittal on appeal from a conviction by a second class M. 47 M. L. J. 481 : 1924 M. W. N. 806 : 82 I. C. 175 : 25 Cr. L. J. 1247.

—legality of order for delivery of possession in case of finding as to cultivation of land by accused. 1924 All 762 : L. R. 5 A. 147.

—the Dt. M. is not a court of appeal within sec. 520, since no appeal could lie to him against an order of acquittal. 46 A. 623.

—where an appeal in the main case lies to the Sub-divisional M. that M. has jurisdiction to pass an order as to the disposal of the property under this sec. 46 M. 162.

—where no appeal is preferred against the main order but is confined to question of disposal of property the appeal would lie to the court to which an appeal ordinarily lies. 46 M. 162 : 42 M. L. J. 534 Contra. 42 B. 664

—where an appeal is preferred under this sec. to a Dt. M. and he transfers the same to the Additional Dt. M. the latter has no jurisdiction to hear appeal. 1928 M. W. N. 633.

S. 522. (Power to restore possession of immovable property)

N. B. By the amendment in place of "*farce*" the words "*or show of force or by criminal intimidation*" have been inserted and in place of "*thinks fit*" the words "*when convicting such person or at any time within one month from the date of the conviction*" shall be inserted and by sub-sec. (3), the words "*an order under this sec. may be made by any court of appeal, confirmation, reference or revision*" have been added. The first portion of the amendment has given effect to the doubtful view of the H. C. Judges in the case reported in 11 C. W. N. 467, and by this amendment the following rulings have become obsolete. 25 O. 434, 27 C. 174, 23 B. 494, 26 M. 49, 25 A. 341, 5 C. W. N. 239, 250.

N. B. By the addition of the sforesaid sub-sec. in the amendment the decision reported in 39 C. 1050 : 16 C. W. N. 811 : 13 Cr. L. J. 638 has become ineffective.

—if criminal force was used by the accused by reason of which a party was dispossessed, an order could be made under this sec. even though the criminal force was not an ingredient of t

S. 522. (Power to restore possession of immovable property) —*contd*

offence of which the accused was convicted. 31 O 691 : 8 C. W. N. 538 F. B.

—possession of the property cannot be restored to the complainant unless criminal trespass was attended by criminal force or show of force or criminal intimidation. 100 I. C. 544 : 28 Cr. L. J. 320. 28 Punj L. R. 238 : 1927 Lab. 833

—this section does not apply in the absence of any finding that criminal force had been used. 104 I. C. 435 24 Cr. L. J. 819.

—an order restoring the land under this section is quite justified when it was found that the accused were putting up a fence and preventing entry by show of force 93 I. C. 895 : 27 Cr. L. J. 495.

—an order under this sec is not sustainable in the absence of a finding that the complainant has been dispossessed of any immovable property. 18 C. W. N. 399.

—an order under this sec. should not be passed or made void in the absence of a party 23 C. W. N. 862.

—an order under s. 522 can only be binding between the parties to the order and can have no finality in favour of one who was not a party and did not claim under any party 86 I. C. 744 : 43 C. L. J. 372 : 1925 Mad. 799, 6 C. L. J. 93 *fol* 23 C. 731 *Ref*.

—where a trial court did not make an order for restoration of property under s. 422 the court of appeal cannot direct restoration but under the amended Code the H. C. acting on reference or revision can pass the necessary order 53 I. C. 910 26 Cr. L. J. 206 : 1924 All. 212

—when an appellate court reverses a conviction and finds there was no use of criminal force, it is bound to set aside an order for delivery of possession and direct a re-delivery of possession that has been given under the order 31 M. L. T. 20 : 1922 M. W. N. 356 : 68 I. C. 38. 23 Cr. L. J. 502

—when the wife who had deserted her husband and for several years, during the temporary absence of the husband from house, broke open the lock and entered into the house and subsequently kept out the husband by force, an order under s. 522 is legitimate. 1923 Mad. 237 : 72 I. C. 892 : 24 Cr. L. J. 476.

—the discretion to pass an order relating to the restoration of property is vested in the trial court, and a court of appeal or revision cannot, in a case where the trial court has refused to exercise discretion, compel it to do so. 45 A. 553 : 21 A. L. J. 459 : 73 I. C. 773, 21 A. L. J. 871. But under the Code as amended, the H. C. acting in reference or revision has power to pass necessary orders. 21 A. L. J. 871.

—an order under this section may be passed by the Court of appeal, confirmation, reference or revision at any time. 1925 Pat. 689 : 4 Pat. 438 : 27 Cr. L. J. 137 : 91 I. C. 809.

—when a person owning a field of sugarcane crop was driven off with sticks and lathes by trespassers, an order under s. 522

S 522. (Power to restore possession of immovable property) suff

could be passed against them, 45 A 25, but where no criminal force was used by the trespassers, no order could be passed under s 522. 21 A L J 593

—when a conviction is set aside the order under s. 522 resulting therefrom must also be set aside 72 I C. 957; 24 O. L. J. 493; 1923 Cal 15 118 I C. 392; 30 Cr. L. J. 902, even though the equities of the case may be entirely in favour of the complainant. 118 I. C. 392 30 Cr L J. 902

—an order under this section may be passed within one month of the disposal of a criminal revision petition. 99 I. C. 663; 1927 Nag 131; 23 Cr L J 491

—as the appellate court can pass an incidental or consequential order under s 424 (d) an order under this sec. is also subject to appeal and is similarly subject to the revisional powers of the H. C. under s 439 29 C 724, 25 C 633 Diss.

—the H. C. has full power to interfere with an order of the M. under this sec. although this sec. is not mentioned in sec. 520. 36 C 44.

—an appellate court may set aside an order under this sec. while affirming the conviction. 19 C. W. N. 990.

Ss. 523 and 524. (Procedure as to the disposal of property taken under s. 51).

—this sec does not apply to properties produced in court in an inquiry or trial under a search-warrant, where s. 517 applies. 17 B 748, but it has been subsequently held that the words "seized by the Police" apply equally, whether the seizure is made by a M's warrant or without it. 26 B 552 4 Bom. L. R. 276

—this sec. does not apply to standing crops. 23 B. 494.

—when the ownership is uncertain, property should be returned to the person with whom the Police found it. 5 Bom. L. R. 25, 29 M. 375, 22 B. 844, 17 B 766

—the M. cannot make order in favour of the party conditional on his furnishing security, 7 C. W. N. 523, but he can deliver the property to one party on some terms. 5 C. W. N. 415.

—the M. can inquire into ownership 17 B. 748, 8 B. 338.

—statements made before the Police as to ownership is admissible. 9 B. 131; 5 P. L. J. 321

—the M. cannot review his order. 4 Bom. L. R. 12.

—the order of the M. dispensing with the property was not final, it did not deprive the owner of the right of suit to establish his claim. 40 B 200; 17 Bom. L. R. 979

—under suspicious circumstances the M. can pass order that the property should be at the disposal of the Govt. 24 M. L. J. 1.

—all that the law requires is that he should have materials before him to satisfy himself as to who is entitled to possession. 12 Bur. L. T. 265, 4 Leh. 38.

Ss. 523 and 524. (*Procedures as to the disposal of property taken under s. 51*).

—when the M. has issued a proclamation under sub-section (2), he is not bound to make any inquiry till after the expiry of the six months from the date of the proclamation. 22 O. 761.

—the period of six months' limitation in s. 523 (2) applies only to the persons other than the original possessor. The M. to whom the report is made under s. 523 is to dispose of the matter in the first instance and it is only when s. 524 applies that the order of the sub-divisional M. or specially empowered 1st class M. intervenes. 87 I. C. 868; 26 Cr. L. J. 1048; 1925 Sind. 316.

—It is not incumbent on the M. to hold a judicial inquiry on oath before passing an order under sec. 523 Cr. P. C. Such an order can be passed on Police Reports. On a proper case being made out the H. C. can examine orders passed under s. 523. 4 Lab. 38; 73 I. C. 702; 24 Cr. L. J. 670.

—as this sec. allows an appeal from an order under the section, it is doubtful whether the law contemplates a remedy by civil suit. 19 B. 668.

—when no offence is found to have been committed, the property should be returned to the accused and not to be confiscated to the Govt. 17 Bom. L. R. 79.

S. 526. (*High Court may transfer case or itself try it*).

The following amendments have been made in sec. 526 Cr. P. C.

(i) in sub-clauses (ii) and (iii) of sub-section (1) the word "criminal" before the word "case" and in sub-clause (ii) the word "such" before the word "cases" shall be omitted;

(ii) in sub-section (5), for the word "convicted" the word "so ordered" shall be substituted, and for the words "the cost of the prosecutor" the words "any amount which the High Court has power under this sec. to award by way of costs to the person opposing the application" shall be substituted;

(iii) after sub-section (6) the following sub-section shall be inserted namely—

"(6A) where any application for the exercise of the power conferred by the section is dismissed, the High Court may, if it is of opinion that the application was frivolous or vexatious, order the applicant to pay by way of costs to any person who has opposed the application, any expenses reasonably incurred by such person in consequence of the application"; and

(iv) for sub-section (8) the following sub-sections shall be substituted namely:—

"(8) If, in the course of any inquiry or trial, or before the appeal, the Public Prosecutor, the court before which the appeal is made, or the court before which the appeal is made, the court shall adjourn the case or postpone the appeal for such a period as will afford a

S. 526 (High Court may transfer case or itself try it) —contd.
reasonable time for the application to be made and an order to be obtained thereon

(9) *Notwithstanding anything hereinbefore contained, a Judge presiding in a Court of Sessions shall not be required to adjourn a trial under sub-section (8) if he is of opinion that the person notifying his intention of making an application under this section has had a reasonable opportunity of making such an application and has failed without sufficient cause to take advantage of it.*

Applicability of the sec.

—the principle underlying sec. 526 Cr. P. C. is to inspire confidence in the minds of the accused persons in the administration of justice and in the integrity of the Magistracy. 1928 Lah. 460 : 107 I. C. 783 : 29 Cr. L. J. 295

—by the deletion of the word "criminal" from cl. (i) the scope of the section has been widened and an inquiry under s. 14 of the Legal Practitioners Act conducted by a M. comes within the meaning of the word "case" 93 I. C. 700 : 1926 Lah. 199 : 27 Cr. L. J. 476.

—"criminal case" in s. 526 Cr. P. C. (old) might be understood as simply distinguished from a civil case, or in other words a criminal case was one over which a criminal court exercised jurisdiction. 28 C. 709 : 5 C. W. N. 749

—this sec. does not apply to proceedings under s. 145 34 C. W. N. 59 : 50 C. L. J. 331 : 1929 Cr. C. 522 : 1929 Cal. 778, 8 Pat. L. T. 716 : 1927 Pat. 331 6 Pat. 553. 28 Cr. L. J. 1035 : 25 B. 179, 28 C. 709 5 C. W. N. 749, 15 Cr. L. J. 339, *Contra.* 26 M. 188, 34 A. 533, 2 C. L. J. 614.

—proceedings under Chapter VIII are "criminal cases" (old) and can be transferred from one M.'s file to another's. 41 C. 719, 28 C. 709, 33 A. 642, 12 A. L. J. 262, 1913 P. R. 1, 1 S. L. R. 98 *Contra.* 1914 P. R. 5, 1916 P. R. 78.

—the expression "criminal case" (old) included proceedings of a criminal nature under the Code either than enquiries into or trials of offence 3 O. C. 247, 11 O. C. 61 but the amendment has set the point at rest by the deletion of the word "criminal" from cl. (i).

—"commencement of the hearing" in s. 526 Cr. P. C. must mean the commencement of the hearing in the court objected to. 8 C. W. N. 77.

—s. 195 (3) as amended must be read in conjunction with old s. 476 and new ss. 476 A and 476-B, incorporated in that sec. by the new Amendment Act and again all these sections must be read as governed or controlled by s. 426 which clothes the H. C. with power to transfer any case from any file to any other file. 86 I. C. 428 : 26 Cr. L. J. 796.

—in transferring a case the convenience of the accused should be considered rather than that of the prosecution. 94 I. C. 131 : 1926 Lah. 493 : 27 Cr. L. J. 563.

S. 526. Applicability of the sec —contd.

—any inquiry by a M. or a criminal court subordinate to the H. C. can be transferred under s. 526 to any criminal court of equal or superior jurisdiction subordinate to its authority, if the requisite grounds set forth in the sec. are established. 45 A. 700; 21 A. L. J. 619.

—s. 526 applies only to proceedings pending in courts subordinate to the H. C. Panchayet courts established under U. P. Act. VI of 1920 are not subordinate to the H. C. 83 I. C. 350; 21 A. L. J. 925.

—when a M. has acted within the meaning of sec. 117 Cr. P. C. no order under s. 526 can be made subsequently. 19 A. 291.

—the H. C. has power to transfer a case from the file of the Chief Pr. M. to that of any other Presidency M. 22 M. L. J. 114.

—H. C. has no power to transfer an extradition proceeding. 46 C. 31; 20 C. L. J. 241

—under the Letters Patent a single Judge of the H. C. can transfer a case from any court subordinate to it. 9 C. 397, 7 Bom. L. R. 104

—the H. C. can transfer a case to a court having jurisdiction from a court having no jurisdiction. 1929 Sind 250. 1929 Cr. C. 678, 9 All. 191, P. C., 18 All. 350, 8 Bom. L. R. 312, 2 Bom. L. R. 394, 36 M. 387, 42 M. 791, 1925 Pat. 187 Ref

—it is not competent to a superior court to transfer a case filed in a court not having jurisdiction to entertain it, to some other court. 72 I. C. 351; 24 Cr. L. J. 351. 1923 Mad. 326; 17 L. W. 69, 9 A. 191 Ref.

—before an application is made to the H. C. for transfer the Dt. M. must be moved first, 6 Bom. L. R. 480, 24 Cr. L. J. 466 (Lab.), and the case to be transferred must be before a competent court. 10 B. 247, 9 A. 191, 9 M. 356, 3 Bom. L. R. 121, 7 Bom. L. R. 104, 6 C. 30, 17 L. W. 69.

—the application for transfer must be made before the disposal of the case. 2 C. 290, 1 Bom. L. R. 782

—where the application for transfer did not mention any ground of transfer and was made at a late stage of the proceedings after the opposite party had closed his evidence, the application should be rejected. 34 C. W. N. 59. 50 C. L. J. 331; 1929 Cal. 778; 1929 Cr. C. 522.

—the M. cannot make a preliminary inquiry as to whether the grounds of transfer alleged against himself were well-founded. 92 I. C. 894; 1926 Lah. 236; 27 Cr. L. J. 332. 27 Punj L. R. 67.

Cl. (a) When a fair and impartial inquiry or trial cannot be had.

General

—the importance of securing the confidence of the parties in the fairness and impartiality of the tribunal is next only to the importance of securing a fair and impartial trial. 25 C. 727; 3 C. W. N. 65, 8 C. W. N. 75, 10 C. W. N. 793.

S 525 Cl. (a) When a fair and impartial inquiry or trial cannot be had—*contd.*

—if all the circumstances taken together would justify a reasonable apprehension that a fair trial would not be obtained, the case should be transferred. 9 C. W. N. 619, 10 C. W. N. 703, 8 C. W. N. 589, 18 C. 247.

—the doctrine that a reasonable apprehension in the mind of an accused that he will not have a fair trial is a sufficient ground for transfer, is sound, but in applying it regard must be had to the circumstances of each case. 36 O. 904, 12 A. L. J. 33; 14 Cr. L. J. 666; 21 Ind. C. 906.

—the apprehension must be reasonable and there must be sufficient ground for apprehension. 39 C. L. J. 333, 10 C. W. N. 441, 36 A. 239, 33 O. 1183, 18 Cr. L. J. 670; 2 P. L. W. 83; 4 P. W. R. 1913; 14 Cr. L. J. 263; 154 P. L. R. 1913, 12 A. L. J. 735; 16 Cr. L. J. 56; 26 Ind. C. 648, 1 P. L. T. 494, 1926 Lah. 470; 27 Punj. L. R. 491.

—In deciding what will amount to a reasonable apprehension the court must have regard to the degree of their intelligence and their honesty and impartiality both probably fairly low. 10 N. L. R. 15; 15 Cr. L. J. 196; 22 Ind. C. 980, 5 P. L. T. 63, 33 O. 1183, 36 C. 924, 1 P. L. T. 494.

—although a M. may act with perfect impartiality still if the action taken by him is such as to create a reasonable apprehension in the mind of the accused that the M. is against him, the case must be transferred. 106 I. C. 456; 29 Cr. L. J. 40.

—in determining whether the apprehension is reasonable or not the court has not to come to a conclusion on abstract principles but has to bear in mind the degree of intelligence of the accused. 104 I. C. 227; 1927 Lah. 709.

—the question is not whether the belief of the accused that he will not have a fair trial is reasonable or unreasonable but whether it exists or not. 99 I. C. 360; 28 Cr. L. J. 188.

—one important object at all events is to clear away everything which might engender suspicion and distrust of the tribunal and is to promote the feeling of confidence in the administration of justice. 2 P. L. T. 198, 7 N. L. J. 155.

—where a M. receives hospitality in ignorance of the fact that his host is the soo of the complainant there may be reasonable apprehension in the mind of the accused that they would not have a fair trial. 94 I. C. 133; 1926 Lah. 347; 27 C. L. J. 565.

—where the proceedings of the M. were dilatory and he issued a warrant against the wife of the accused she being a pardanashin lady, transfer of the case was desirable. 99 I. C. 1025; 1927 Lah. 16; 28 Cr. L. J. 225.

—transfer should not be granted lightly on sentimental grounds and as a rule transfer application should not be granted when it is supported by false affidavit. 1928 Lah. 276; 107 I. O. 108; 29 Cr. L. J. 220.

—transfer should not be allowed only on the ground that there is apprehension that in the ultimate judgment the Magistrate

Cl. (a) When a trial and impartial inquiry or trial cannot be had—contd.

will not give effect to a legal objection which might be taken. 1928 Lah. 317 : 107 I. C. 773 : 29 Cr. L. J. 289.

—where certain incidents take place in a district raising a reasonable apprehension in the minds of the accused that they cannot have a fair and impartial trial there, the accused are entitled to have their case transferred to another District. 1930 Lah. 951 : 1930 Cr. C. 1050, 1923 Lah. 264, 1925 Lah. 351 : 1928 Lah. 1, *Rel on*

—where the case is repeatedly adjourned to bring pressure on the accused person to produce his absconding co-accused there is ground for transfer of the case. 1930 Lah. 953 : 1930 Cr. C. 1049.

(1) Expression of views or opinions

—when a case is sent to a M. for disposal with a remark by the Dt. M. that it was quite a clear case and the defence was ridiculous it is a good ground for transfer to another District 2 O. W. N. 688.

—where a case is triable by a court of sessions, it will not be good ground for the transfer of the case from the M. holding an enquiry, that the M. expressed certain strong views against a party or that he is going to be produced as a witness. 11 A. L. J. 741 : 14 Cr. L. J. 555 : 21 Ind. C. 155

on account of some
with s. 312 Cr. P. C.,
not be held by the
tion upon the matter
J. J. 240, 8 C. L. J. 59.
d that the offence has
another M. 65 I. C.

accused not to defend
. L. J. 528.

—where the accused was informed by his pleader that the Magistrate had told him that the accused would be convicted unless he compromised a civil suit with complainant the accused is entitled to have his case transferred. 1928 Lah. 75 : 28 Cr. L. J. 988 : 105 I. C. 812.

—where a M. has already formed a decided opinion about the case and has expressed a strong opinion as to the guilt of the accused in the case, 10 Bom. L. R. 201.
3 C. W. N. 278, 8 C. W. N.
J. 566 (Pat.), 23 Cr. L. J. 168,
6 Bom. L. R. 800.

but expression of opinion by the Magistrate adverse to the
arguments of the
. O. 608 : 29 Cr.

—where a M. has in another proceeding expressed his opinion that the accused was in his opinion guilty in the case sought to be

S. 526. (i) Expression of views or opinions - contd.

transferred, there was ample ground for a reasonable apprehension in the mind of the accused. 92 I. C. 162. 1926 Nag 98: 27 Cr. L. J. 210.

—remarks of the M. in the course of the examination of the witness for the prosecution to the effect that they had been bribed or that the police were bribed, are sufficient grounds for transfer. 88 I. C. 993: 1925 Pat. 818: 26 Cr. L. J. 1249.

—ordering the prosecution of the defence witness for perjury at the time the evidence is recorded and thus striking terror into their hearts is sufficient to justify a transfer. 106 I. C. 456: 29 Cr. L. J. 40.

—where in recording the evidence the M. made a note that the witness faltered and from his demeanour it appeared that he had not told the truth, there was sufficient ground for transfer. 29 C. W. N. 316: 1925 Cal 480. 86 I. C. 708. 26 Cr. L. J. 852.

(ii) Personal knowledge, chance of being witness.

the accused persons are moved
knowledge in respect of the
it based on evidence on record
Cal 809. 1929 Cr. C. 597, 20 C.

—receiving letter from the witness for the defence calculated to create a reasonable apprehension on the mind of the petitioner that he was a friend of the Magistrate may be ground for transfer. 1929 Lah. 702: 30 Cr. L. J. 1043: 30 Punj. L. R. 657: 119 I. C. 327: 1929 Cr. C. 216

—where a M. had instituted proceedings under s. 110 upon his own knowledge the H. C. directed the case to be transferred. 6 C. W. N. 595, 28 C. 709.

—when a M. has dealt with a dispute between two parties in an informal manner as a private arbitrator, he should not afterwards deal with the same dispute as a M. as it would be inconvenient and embarrassing for him to do so and as his previous informal knowledge must necessarily hamper him at every turn. 18 C. L. J. 150: 14 Cr. L. J. 602. 21 Ind. C. 474

—a case should be transferred when the M. is a necessary witness in the case. 26 A. 530. 19 Cr. L. J. 623.

—when the M. becomes aware of some facts of the case being present during Police investigation, he should not try the case. 5 C. W. N. 864.

(iii) Trying counter-cases.

—a judge is not debarred from trying a case of rioting because he has tried a counter-case and expressed an opinion, but he should not be influenced by his former impressions. 1 C. W. N. 426, 33 A. 583: 12 Cr. L. J. 561: 12 Ind. C. 652, 13 C. L. R. 275, 1917 Pat. 30, 36 C. 904.

S. 526. (III) Trying counter-cases—*contd.*

—expression of opinion in counter-case is not sufficient ground of transfer. 1 P. L. J. 399, 1 S. L. R. 37, 6 Bom. L. R. 1092, 1923 Nag. 217, 29 Cr. L. J. 589, 109 I. C. 605.

—a case was transferred from the file of the M. because he tried a counter-case. 14 C. W. N. 246 (note), 30 M. 233, 9 M. L. T. 162, 1910 M. W. N. 735; 8 Ind. O. 721 but it is not *per se* sufficient ground for transfer. 5 S. L. R. 241; 15 Ind. O. 804; 13 Cr. L. J. 532.

—It is obviously desirable that cross complaints should ordinarily be disposed of by the same Magistrate. Adverse decision in one case is no ground of transfer. 111 I. C. 851.

—expression of stray opinion may be sufficient ground of transfer. 30 M. 233, 1916 P. L. R. 78, 10 O. L. J. 556.

(iv) Supplementary or subsequent case.

—a M. trying one batch of persons for a particular offence is in itself no ground for transferring a subsequent trial pending before him of another batch of persons for the same offence. 31 O. 715, 8 C. W. N. 910, 1928 Lab. 460; 107 I. C. 783; 29 Cr. L. J. 295.

—a S. J. is not debarred from trying a person for an offence under s. 196 I. P. C. when he has given sanction under s. 193 Cr. P. C. as D. J. 16 C. 766.

—the trial by the M. of some of the accused under one sec. is no ground for transfer of the case of the other accused under a different sec. 15 Cr. L. J. 253, 93 Ind. C. 20.

—whether a trial before a particular M. is expedient for the ends of justice is a question which should be considered from the point of view of the accused person as well, and unless it is impossible to get a M. other than the one who has already convicted the accused on the same charge at a previous trial or unless there were circumstances necessitating the trial of the same case before the same M. over again, it is desirable that the re-trial should not be held by the same M. 30 C. W. N. 1002; 1926 Cal. 1173; 97 I. C. 943; 27 Cr. L. J. 1188.

(v) Similar case.

—the mere fact that in another case, on other evidence, the judge has come to a particular conclusion is not in itself a sufficient ground for transfer. 36 C. 904, 1 C. W. N. 426, 31 C. 715, 11 Pat. L. T. 248; 1930 Pat. 337; 31 Cr. L. J. 732; 124 I. C. 846 but see 4 C. W. N. 824.

—the fact that the M. had already tried certain other persons charged with the same offence is not a ground of transfer. 24 Cr. L. J. 800 (Oudh).

(vi) Relationship with party.

—the fact of the M. being a friend of a remote relation of the complainant is not *per se* ground for transferring the case. 4 P. W. R. 1912 Cr. 66 P. L. R. 1920; 15 Ind. O. 314; 13 Cr. L. J. 474.

S. 526. (vii) Relationship with party—contd

—it is a good ground for transfer that the *multe* or pleader for the complainant is a near relation of the trying M. and the accused thinks he would not get justice. 23 C. W. N. 418 88 I. C. 637 : 1925 Cal. 806 : 26 Cr. L. J. 1183, 93 I. C. 764 1926 Pat. 461 27 Cr. L. J. 844 7 Pat. L. T. 770.

—the mere fact that the M. was the master of the complainant is not sufficient ground of transfer. 9 B. 172.

—the fact that both the complainant and the accused are acquainted with the M. who sometimes gets medical help from them is no ground of transfer. 1917 P. W. R. 13.

—the M. being a relation of the Sub-Inspector of Police is no ground of transfer. 28 C. 297.

—but where the prosecution witness was a relation of the M. the case was transferred 13 C. W. N. (note)

—where the prosecution witness is a friend of the Magistrate as well as of the complainant the case should be transferred 93 I. C. 318 : 27 Cr. L. J. 782 1925 Lah. 410

—the Magistrate being a class-fellow of the accused fifteen years back is no ground for transfer 27 A. L. J. 616 30 Cr. L. J. 522 : 115 I. C. 641 : 1930 Cr. C. 374 : 1930 All. 262

(vii). Magistrate being interested.

—when appeal was preferred to the Dt. M. who happened to be the Chairman of the Municipality which was interested in the appeal, it was transferred. 23 C. 44

—where the M. who tried a case arising out of the proceeding of the Municipality, was himself the President of the Municipal Committee and was present in the meeting in which the resolution was passed, the case should be transferred, 69 I. C. 384 : 23 L. L. J. 704 : 1922 Lah. 72, so also when the trying M. is personally interested in the District Board and the prosecution is against certain officials. 1929 Lah. 114 : 9 Lah. L. J. 583 : 103 I. C. 271 : 29 Punj. L. R. 282 : 29 Cr. L. J. 371.

—but a District Magistrate is not in any way disqualified from hearing an appeal before him in the case of prosecution of a Municipal Head clerk by reason only of a copy of the proceeding sanctioning the prosecution having been submitted to him under s. 60 of the Municipal Act. The fact that as head of the District he receives copies of the proceedings of the Municipality does not make him an interested party. 61 I. C. 515 22 Cr. L. J. 387, (22 C. 44, 11 C. W. N. 262, note) *Dist*

—where the trying Magistrate obtained extra judicial information from various matters and to a certain extent involved himself in those proceedings it was desirable for the interests of justice that the case should be transferred. 11 C. W. N. 262 (note).

—where the cantonment M. who was the Secretary of the Cantonment Committee ordered the prosecution of the accused in respect of alleged building in contravention of cantonment rules he should not try the case 20 A. L. J. 911

526. (viii). Making inquiry or taking part in Police gation—*contd.*

—a M. who takes more than a formal part in a police investigation is disqualified from trying the case. 4 Bur. L. J. 65; 1945 R. L. B. R. 29 *fol.*

—when a M. took part in the settlement of a case but the action fell through he should not try the case. 23 A. L. J. 191; 805; 1925 A. 259.

—mere inspection of locality is no ground of transfer. 1901 R. 69, 1901 P. R. 13

—but if the M. makes the inquiry in the absence of some party to be the ground of transfer. 1901 P. L. R. 165, 12 C. W. N. 748, L. J. 166, 39 C. 476, 19 A. 302, 6 O. L. J. 680

—when M. is a necessary witness in the case it should be deferred. 26 A. 536, 19 Cr. L. J. 632 (c), *contra*, 1897 A. W. N. 17.

ix) Bias or prejudice.

—the question is not whether there was any real bias in the mind of the judge, but whether any incident happened creating in mind of the accused a reasonable apprehension that he may have a fair and impartial trial. 24 C. 493, 19 A. 64, 20 C. 857, 15; 10 A. L. J. 357; 13 Cr. L. J. 823; 17 Ind. C. 567, 28 C. 1928 Ail. 396; 26 A. L. J. 1250; 29 Cr. L. J. 750; 110 I. C. 686 B., 110 I. C. 801; 29 Cr. L. J. 769, 107 I. C. 160; 29 Cr. L. J. 1928 Lah. 180; 106 I. C. 456, 29 Cr. L. J. 40, 109 I. C. 812; 20 L. J. 620, 1928 Lah. 975, 1929 Cr. C. 597; 1928 Cal. 809.

—the court must be satisfied that on the fact disclosed there is a reasonable apprehension that the applicant may not have a fair and impartial trial. Incidents may be susceptible of explanation and may not show any bias in the mind of the Judge but they create in the mind of the applicant a justifiable apprehension that he would have an impartial trial, it is ground for transfer. P. L. R. 273; 7 Lah. L. J. 241, 1928 Lah. 1; 111 I. C. 319; 29 Cr. C. 815; 9 Lah. 537, 1925 Lah. 361, 1923 Lah. 264.

—if the M. has prejudiced the case there ought to be a transfer. 18 C. 247.

—If by reason of the words or conduct of M. before whom a case is pending any party reasonably apprehends that there is a bias on the part of the officer concerned, it would be a ground for transfer the case from his file, if there is no real bias. 28 C. 709; 5 C. W. N.

—not passing any order on the application for time to move the H. C. for transfer and continuing the recording of evidence before and after the communication of the issue of rule by the vakil are themselves grounds for transfer. 11 C. W. N. 507, 12 C. W. N. 242 (note).

—stopping further cross-examination of the complainant on the ground that he has already been cross-examined for an hour is a reasonable ground for transfer. 20 Cr. L. J. 559. But not always. 1917 P. W. R. 29, 25 Cr. L. J. 1185 (Cudh).

S. 626. (ix) Bias or prejudice—*contd.*

—where from the number of witnesses the case could not be finished in one day but the Judge insisted on finishing the case in one day and refused to adjourn the case, this constituted sufficient ground of transfer. 17 A. L. J. 48.

—but where the statement of the witness showed his complicity in the offence and the M. ordered him to be put on trial along with the accused, this was no ground of transfer although the case was transferred on the ground of the statement being on oath. 20 Cr. L. J. 385 (C).

—where a M. ordered the prosecution of the defence witness for perjury at the time of recording the evidence it is likely to strike terror into the heart of the defence witness who may be unwilling to depose, consequently such a step may be sufficient ground for transfer. 1928 Lah 160 : 106 I. C 456 : 29 Cr. L. J. 40.

—where the M. refused to rectify the evidence as to the identification of the accused there was sufficient ground for transfer. 84 I. C. 441 : 26 Cr. L. J. 297 : 1925 Pat 339

—certain illegal *parwanas* were issued by the accused who did not withdraw them although the Dt. M. asked him to do so, he might still be tried by the Dt. M. 1922 P. 494.

—when no legal practitioner ordinarily working in criminal cases is willing to act for the accused, it is a good ground of transfer of the case to another district. 88 I. C 1048 : 2 O. W. N 682

—discussion with two other officers in the club with respect to a case by the S. J. is highly improper and the case should be transferred on that ground. 65 I. C. 558 : 23 Cr. L. J. 126 : 19 A. L. J. 946.

—a *bona fide* mistake of law is not a ground of transfer, 8 C. W. N. 838 nor an error of judgment in admitting an evidence. 20 Cr. L. J. 609 (Pat) or in refusing to summon a prosecution witness for cross-examination. 3 P. L. T. 32.

—where the M. asked the defence pleader not to defend the accused *held* that under the circumstances of the case the accused could not have confidence in the impartiality of court and the case should be transferred. 3 Lah. L. J. 528

man of importance in
Retamal 474.

sed on bail and treated
transfer 22 B. 549.

—the passing of the order of cost of adjournment against any party does not disclose a prejudice sufficient to get a transfer of the case. 2 P. L. W. 218.

—where the Dt. M. refused to produce papers called for by the accused on the ground that they were missing and some confidential, this could not be ascribed to bias against the accused and no transfer was allowed. 20 Cr. L. J. 609 (Pat.)

—where the request to have access to papers seized by police was unreasonably disallowed and the trying M. demanded heavy

S. 526. (ix) Bias or prejudice—contd

bail although the amounts involved in the cases were small, there was sufficient reasons of apprehension. 1929 Cr. C 636 : 1929 Lah. 860.

—where the M made an order that he would examine only one witness a day and not devote more time to the case, it was sufficient ground for transfer. 89 I. C. 451, 26 Cr. L. J. 1363.

—where the M at the instance of the police commenced trial on a public holiday it was sufficient ground for transfer. 1928 Lah. 334 : 29 Cr. L. J. 294 : 107 I. C. 779

—the act of consultation with the superior in disposing of a bail application and refusal of the bail as advised by the latter forms a ground for transfer. 1928 Lah. 1 : 9 Lah. 537 : 111 I. C. 319 : 29 Cr. L. J. 815

—where the M. does not discharge the statutory functions under s 342 Cr. P. C in a judicial manner and acts as the mouth-piece of the Public Prosecutor in examining the accused that is a valid ground for the transfer of the case. 1930 Lah. 166 : 123 I. C. 570 : 1930 Cr. C. 174 : 31 Cr. L. J. 560

Cl. (b). (When some questions of law of unusual difficulty likely to arise.)

—since the Code provides appeals and revisions from the decision of the lower court, if the lower court errs in any point of law it can be set right by the appellate court, the H. C. is loath to transfer a case on the ground of difficult question of law. 15 W. R. 69

—a *bona fide* mistake of law is not a ground of transfer. 8 C. W. N. 833 nor an error of judgment in admitting an evidence. 20 Cr. L. J. 603 (Pat.)

Cl. (d). (When transfer order will tend to the general convenience of parties or witnesses).

—where all the acts constituting the offence were committed in Bombay but the complainant chose to lodge complaint in the Ratnagiri Session Court and the accused also wished to be tried there the H. C. ordered the trial to be held at Ratnagiri. 2 Bom. L. R. 394.

—convenience of the parties should be looked to and not the fact of the benefit of the accused to be tried by jury. 8 C. L. J. 59

—transfer should be allowed on the ground of it being conducive to the convenience of parties if the case is tried in a place where most of the witnesses specially of the accused lie. 45 A. 701, Ratanlal 927.

Cl. (e). When transfer order is expedient for the ends of justice or is required by law.

—unnecessary delay in the disposal of a petty case is good ground for transfer. 2 Weir 679, 12 A. L. J. 262, 8 M. L. T. 222

—where the case was relating to a dispute between the Hindus and the Mahomedans in respect of a mosque it was desirable that the case should be tried by the D. M. or some other European M. 1915 P. W. R. 1.

S. 526. Sub-sec. (5), applicant is to execute bond to pay cost of the opponent.

—when a case is transferred at the instance of the accused he is to bear the costs of the complainant incurred before the M. from whose file the case is transferred. 8 C. W. N. 589, but see 8 C. W. N. 75.

Sub-sec (6A), High Court may order the payment of cost of the opponent.

... is made to the H. C. and
frivolous or vexatious the
entitled to recover its costs
so that the Crown neither
1930 A. L. J. 209; 1930 Cr.
B

Sub-sec. (8), adjournment on application under the section

N. B.—The amended sub-sec provides for a compulsory adjournment at any stage of the case except that a Sessions Court may refuse to adjourn when it is of opinion that the application has been unreasonably delayed

—the provisions of this sec are mandatory. An application made even in the course of trial must be granted, otherwise the whole proceedings are vitiated. 57 M. L. J. 763; 30 L. W. 883; 33 M. 165; 1930 Cr. C. 187; 1930 Mad 187, 32 Bom L. R. 1128; 1930 Bom 480 F. B.

—under the amended s. 526 (8) the M. is bound to adjourn the

sub- provisions of this
-650 case. 1928 All.
l.

Lab. is illegal. 1929
L. J. 1048. Cr. C. 216, 30 Cr.

—when bona fide application for transfer is about to be made it would usually be well for the M. at any stage, to grant a reasonable time to enable it to be made. 13 Cr. L. J. 584; 5 Bur. L. 137; 15 Ind. C. 1000.

S. 525. Sub-sec. (8), adjournment on application under the section—contd.

—for the purpose of a 526. (8) Cr. P. C. the hearing or trial must be taken to include all the proceedings taken to determine a case, and the first step in the hearing of a Session trial is the reading and explaining of the charge to the accused 1911 M. W. N. 311; 10 Ind. C. 390; 12 Cr. L. J. 271, 29 C. 211, *not approved*.

—refusal of the M. to stay proceedings on the filing of a telegram from the petitioner's Vakil intimating the order of the H. C. is injurious and is a ground for transfer. 16 C. W. N. 1031; 17 Ind. C. 78; 13 Cr. L. J. 766; 11 C. W. N. 507, 5 C. W. N. 110, 2 C. W. N. 498, but see 17 C. W. N. 536.

—the expression "inquiry or trial" in cl. (8) refers to those inquiries or trials which are specially stated in the earlier portion of the Code and the hearing of an application for transfer is not an inquiry within the meaning of the clause. 97 I. C. 974; 27 Cr. L. J. 1214; 5 Pat. 229 1927 Pat. 59.

—a trial is over before the judgment is pronounced, so where the intention to apply for transfer was intimated after arguments were over and before the judgment was pronounced and the M. refused to adjourn the case this did not contravene the sub-sec (8) 52 M. 355; 118 I. C. 274; 56 M. L. J. 216 1929 M. W. N. 60; 30 Cr. L. J. 908

—a "case" under cl. (8) includes a proceeding under s. 145 Cr. P. C. but as the clause directs that the application to the trial Court is to be made either by the Public Prosecutor or the complainant or the accused, it would seem that the parties in s. 145 proceedings cannot have the advantage of the clause. So a M. is not bound to postpone a proceeding under a 145 because the party stated that they had desire to move the H. C. for transfer. 8 Pat. L. T. 716; 1927 Pat. 351; 6 Pat. 553; 106 I. C. 219; 28 Cr. L. J. 1035; 34 C. W. N. 59; 50 C. L. J. 331; 1929 Cal. 778; 1929 Cr. C. 522.

Procedure and jurisdiction

—the law does not require that an application for postponement of a case under this sec. or an application to the H. C. for transfer should be made within any particular period before the date fixed for hearing. It requires only that the party should notify to the court before the commencement of the hearing his intention to make an application for transfer of the case. 29 C. 211; 6 C. W. N. 251, 8 C. W. N. 77, 33 C. 1183 10 C. W. N. 793; 3 C. L. J. 637, 35 M. 701; 12 Cr. L. J. 271, *Ref.* 31 C. 715. 8 C. W. N. 910 *Dist*

—the omission to issue a notice upon the accused before considering the transfer application is an irregularity but it does not follow that the order of transfer is illegal 83 I. C. 345; 1 Pat. L. R. 109; 2 Pat. 333; 1923 Pat. 47, 71 I. C. 603. 24 Cr. L. J. 187; 5 Lab. L. J. 230

—the H. C. has no jurisdiction to order transfer of a case from a court not subordinate to it. 40 M. 835.

S. 526. Procedure & Jurisdiction—*contd.*

—the Village Panchayet is not subordinate to the H. C. 45 A. 167.

—the transfer must be to a court competent to try the case and of equal or superior jurisdiction, 37 A. 20, 24 A. 151, and in selecting the court the gravity of the offence should be considered. 16 A. L. J. 294

—the Code does not recognise a private prosecutor who is complainant, as a party to the case and he is not competent to apply for transfer of the case as a party interested. 4 P. L. J. 636, *contra* 88 I. C. 993.

plainant, is not a party
R. 869.

supported by an affidavit
W. N. 37, 1886 A. W. N.

M to swear a counter-

—where in spite of application under sub-sec. (8) the M without passing any order thereon proceeded with the case it was enough to show a bias and a transfer was necessary. 11 O. W. N. 507, 5 O. W. N. 110, 16 O. W. N. 1031, 2 O. W. N. 498, the court should give weight to the telegram as to the issue of rules 5 O. W. N. 110, 2 O. W. N. 498, but the accused must be present on the date fixed. 17 O. W. N. 536

—where a subdivisional M. refused to transfer a case under this sec the Dt. M. is not precluded from exercising his power of transfer at the request of the same party 40 M. 791: 18 Cr. L. J. 335.

—when a Sub-divisional M. transferred a case from one file to the other under this sec the D. M. may legally re-transfer the case 16 O. W. N. 219 (note).

—when a Dt. M. has transferred a case to a S. D. O. the latter cannot transfer it to his subordinate 36 A. 166.

—when a D. M. transfers a case to a subordinate M. for trial the D. M. has no power to do anything except to withdraw the case to his own file 5 O. W. N. 498, 3 O. W. N. 490, 4 O. W. N. 242: 30 C. 449, 27 C. 798, 979

—a case under s 107 Cr. P. C. 8 C. 85 or a case for maintenance 40 Punj Rec. 11, a case under Ch. XII, 22 C. 898, 28 C. 709: 5 O. W. N. 749, 5 O. W. N. 286, 27 Punj Rec. 78, may be withdrawn under this sec.

—the H. C. will not ordinarily entertain an application for transfer when the applicant can under the law move the Dt. M. for the same relief and has not done so. L. R. 6 All 87, 1923 Lah. 685: 72 I. C. 882: 24 Cr. L. J. 466.

S. 528. (S. J., Chief Pr. M., Dt. M. and S.M. may withdraw cases from subordinates)—*contd.*

—a case which has been disposed of by competent authority cannot be withdrawn by the Dt. M. to his own file under this sec. 17 C. W. N. 451, but when the subordinate M. refused to issue processes against the remaining accused the Dt. M. had ample power to do so as the case was still pending before the subordinate M. 5 C. W. N. 458 and see 1929 Cr. C. 582; 1929 Pat. 710, 4 C. W. N. 242.

—where on the complaint being dismissed under s. 203 the Sessions Judge had directed further inquiry into the case the Dt. M. could not transfer the case from the file of that M. to any other M. 11 C. W. N. 316.

—the case must be transferred to a M. competent to try the case, 37 A. 20, and having jurisdiction over the matter, 41 M. 246, 36 A. 513.

For grounds of transfer see s. 526

—reasons for the transfer must be recorded, 5 Lah. L. J. 230, 1929 Cr. C. 660 1929 All. 932, 16 Cr. L. J. 626 (Mad) Ratanlal 590. On appeal to the High Court the order, 1924 M. W. N. 873 : 83 is the proceeding unless it has 28 A. 421, 5 Pat. 229 : 97 I. C.

—the convenience of the accused must be looked to in considering the question whether fair and impartial trial is likely to be held. 1928 Pat. 347 : 29 Cr. L. J. 373, 108 I. C. 329.

—an order of transfer should not be made ex parte and without giving notice to the party affected. 21 Bom L. R. 276, 39 M. L. J. 714. Ratanlal. 460, 474, 655, 877, 3 A 749, 7 C. W. N. 114, 102 I. C. 213 : 28 Cr. L. J. 517 1927 Nag. 244, 22 B 549, 8 C. 393. 1902 P. R. 28, 14 C P L. R. 190, 5 Lah. L. J. 230, 6 M. L. T. 14, 1887 A. W. N. 53, 51 M. 610 : 110 I. C. 590 : 1928 Mad. 560. 29 Cr. L. J. 734, 1929 Cr. C. 660 : 1929 All. 932, 3 All 740, but it is not mandatory, 21 Bom L. R. 276, 2 Pat. 333, and notice was found unnecessary in 7 N. L. R. 97, 24 M 317, 28 A. 421, 2 Weir 692, 1910 P. R. 3.

the accused is an irregular 25 Pat 228, 93 I C 75 : 27 R. 80, 102 I C 213 : 28 Cr. 76, 1929 M. W. N. 265 : 119

—when a Dt. M. makes an order of transfer, the case is out of his hands. 32 C 783, 12 W R 53, 27 C. 979, 30 C. 449, 8 C W N. 490.

if transferred should proceed from were left, 19 W. R. 28, and be other M. subordinate to him 36

—he may entertain an application for transfer when the applicant could under the law, move the Dt. M. for the same relief but did not do so. 87 I. C. 112 1925 All. 640 26 Cr. L. J. 960.

S. 528 B. (Failure to plead status, a waiver.)

—an European British Subject can relinquish his rights and privileges to be dealt with as such. 37 C. 467, 6 C. 83, 1912 P. R. 6.

—before the committing Presidency assert before the H. C. any the majority belonging to his
929: 26 Cr. L. J. 335: 1925

Col. 384.

—“any subsequent stage of the case” includes the stage of appeal and revision. 45 M. L. J. 800.

—before the rights can be considered to have been waived it must appear that the rights were distinctly made known to the accused to enable him to exercise it. 18 C. W. N. 385, 6 C. 83, 7 N. L. R. 93, *contra*, it is not the duty of the M. to ask categorically whether the accused claims his right as an European British subject. 1885 P. R. 5.

—failure to put forward a claim to be dealt with as an European British subject before the M. or at the Sessions trial before the H. C. does not debar him from relying on his right for the purposes of an appeal from his conviction under s. 449, (1) (c), Ss. 528-A and 528-B can have no application to sec. 449, 40 C. L. J. 256: 29 C. W. N. 447: 52 C. 347. 1925 Cal. 14. 81 I. C. 1041.

—the waiver is revocable if it is withdrawn promptly and shortly after it is made and substantially nothing has been done in the interval in pursuance of the waiver. 1908 P. R. 1, 1878 P. R. 17

S. 529. (Irregularities which do not vitiate proceedings.)

—having regard to secs. 529 and 531, it must be shown that proceedings wrongly held in a case have in fact occasioned a failure of justice. 39 C. 119.

—where a M. after taking cognizance of a case makes order for an unauthorised investigation the irregularity is cured under this sec. 32 M. 3.

—erroneous transfer is cured by this sec 35 C. 243, 36 C. 370, 869: 2 C. L. J. 514: 3 Cr. L. J. 83, 4 C. W. N. 821, 5 C. W. N. 636.

—where a First Class Magistrate not empowered to transfer the case to Third class Magistrate acted *bona fide* though erroneously in transferring the case to Third class Magistrate the latter had jurisdiction to try the case 1928 Bom. 286: 30 Bom. L. R. 653: 115 I. C. 399: 30 Cr. L. J. 467.

S. 530. (Irregularities which vitiate proceedings)

—when order is required to be made under s. 106 an unauthorised M. should refer the whole case to the proper authority. 35 C. 1093, 21 C. 622.

—cl. (j) of this sec. refers only to cases where a M. is not competent by virtue of the position he holds or powers vested in him to try a case referred to in s. 145. 5 C. W. N. 686.

S. 530 (Irregularities which vitiate proceedings)—contd.

—proceeding without jurisdiction is void *ab initio*. 11 C. L. R. 55, 8 B. 307, 7 P. R. 1910, 12 C. W. N. 246; 7 C. L. J. 70, 29 C. 412.

—where evidences are recorded partly by Magistrate who had no jurisdiction and partly by M. having jurisdiction, conviction was illegal requiring retrial. 47 C. L. J. 172; 55 C. 65; 29 Cr. L. J. 464; 109 I. C. 175; 1928 Cal. 163.

—but an order of the M. under s. 493 Cr. P. C. would not be vitiated merely because the proceedings are instituted in wrong Court. 49 C. L. J. 205; 1929 Cal. 336; 30 Cr. L. J. 525; 115 I. C. 602.

—where the M. tries summarily in deliberate disregard of law the proceedings are void. 5 C. W. N. 252, 10 O. & A. L. R. 1196, 29 C. 409 1907 P. L. R. 21, 4 C. 18, 46 A. 446.

—where process was issued on a charge under ss. 147 and 323 I. P. C. but the M. convicted the accused under s. 323 only after a summary trial the conviction was illegal and the omission to frame a charge under s. 147 was not a irregularity so as to
99 I. C. 220 29 Cr. L. J. 492 :

circumstances of aggravation
his jurisdiction was in fact
his jurisdiction, his action
would not be void. 2 Rang.
fol 23 C. W. N. 103; Ref.
L R 267

—where the M. entirely overlooks some facts which could take the case out of his jurisdiction and tries the accused for a lesser offence he does not act without jurisdiction if on the other

—where a land is attached under s. 88 without a warrant the H. C. may interfere to set aside the irregularities under its inherent powers. 96 I. C. 977; 1926 Lah. 662; 27 Cr. L. J. 1025.

—where the M. convicted accused for an offence triable by him although the facts proved constituted a graver offence not triable by him the proceeding was not void under the sec. 96 I. C. 873; 27 Cr. L. J. 1017; 1926 Pat. 393, 1926 Pat. 36, 10 C. 85, 13 B. 502, 24 M. 657, 4 Bom. L. R. 267.

—where the M. doubted if facts justified a charge of dacoity but the defence invited him to try the case, it was not open to the defence to object on the ground that the M. had no jurisdiction. 32 Bom. L. R. 1279.

S. 531. (Proceedings in wrong place).

—the policy of the Code as shown by ss. 531-538 is to uphold in most cases orders passed by criminal courts which were lacklax :

S. 531. (Proceedings in wrong place)—contd.

jurisdiction or which have committed illegalities or irregularities, unless failure of justice has been occasioned thereby. 42 M. 791.

—where criminal appeal was heard by a Judge at a place where he was empowered to exercise civil but not criminal jurisdiction and no failure of justice occasioned thereby it was covered by this sec. 17 A. 36 F. B.

—this sec. refers only to districts, sub-divisions and local areas governed by this Code. 16 C 607, 8C 985

—a finding, sentence or order regularly passed by a court in the case of an offence committed outside its local area, cannot be set aside when no failure of justice has taken place. 30 M. 94, 26 M. 640, 17 M. 402, 16 B. 200, 13 B. L. R. Ap 4.

—an order of committal to the Sessions Court is an "order" under s. 531 Cr. P. C.; the H. C. can interfere with such order in revision. 83 Ind. C. 577; 3 Pat. 417.

—where the accused is tried at a place in contravention of s. 181 (4) but he is not prejudiced the trial is not vitiated. 21 A. L. J. 912.

—where no objection was taken in the Lower Court and no prejudice could be shown in the H. C., the H. C. declined to interfere. 21 W. R. 88.

—the fact that the objection to jurisdiction was taken at an early stage was not a conclusive proof that the accused was prejudiced by the irregularity; 34 C. L. J. 200.

—unless the proceeding under s. 107 Cr. P. C. are started by a Dt. M. both the person informed against and the place where the offence was committed must be within the M's local jurisdiction; within while the person was committing the offence but no question of jurisdiction as mere irregularity curable
7 Cr. L. J. 1132.

S. 532 (When irregular commitments may be validated.)

—this sec. is a curing or remedial section and must be strictly construed in the interests of the accused person. 1929 Cr. C. 468; 1929 Cal. 756 F. B.

in which the defect arises

L. J. 416, 16 B. 200, 17 M.

personal to the commit-

in which a M. having general powers to commit an accused person to the H. C. commits an accused over whom he has no jurisdiction or commits him for an offence which is triable by a Court of Sessions or H. C., 1929 Cal. 756; 1929 Cr. C. 468 F. B.

—commitment without previous sanction where necessary may be accepted. 22 B. 112, 9 B. 288 F. B., *contra*. 16 P. R. Cr. 1890.

—this sec. does not apply to commitments made by M.s. acting under s. 316, 12 C. W. N. 136.

S. 532. (When irregular commitments may be validated)—*contd*

—this sec. does not apply when the commitment is bad owing to disqualification of the Magistrate under s 556, 2 L. B. R. 209.

—where objection to the want of jurisdiction of the M. to commit is not taken before the M. the H. C. can accept the commitment under this sec. if it considers that the accused has not been prejudiced thereby. 22 B 112.

S 533 (Non-compliance with provisions of sec 164 or 364).

—the defect which this sec intends to cure is one not of
 when the M. has omitted
 state in the certificate that
 g 2 C W N 702, 1915

—the exact words of the warning which must be given to a person making a confession are not very material provided the M. explains and the person who makes the confession clearly understands that he need not make such confession 89 I. C. 1026 : 1925 Lah. 448 : 26 Cr. L. J. 1458 : 26 Punj L. R. 579.

—where the certificate attached to a deposition was not in accordance with the requirements of sec 164 Cr P C but the M. went into the witness box and deposed to the effect that he complied with the requirements of sec. the defect was cured by I. C. 65 : 11 Lah. L. J. 5, 1930

—the term "such statement" in s 533 refers to statement recorded regarding which the Magistrate deposes that it was duly made. Under this sec. oral testimony of the contents of the confessions would be admissible notwithstanding sec. 91 Evi. Act. 31 Bom. L. R. 565 : 1929 Bom. 327.

—the test is so long as the irregularity in recording a confession does not injure the accused it is curable. 31 Bom. L. R. 565 : 1929 Bom. 327.

—the sec will not render a confession admissible when the provisions of the law have been totally disregarded 9 M 224, 17 C 162 *contra*. the sec applies to defects not only of form but of substance also. 23 B. 221, 21 B. 495.

—but the sec will not apply where no record whatsoever has been made of a confession 35 A. 260.

—it is advisable that the M. should always record a memorandum showing that he has, by questioning the person making the statement, satisfied himself that the confession is made voluntarily. 83 I. C 88 : 26 Punj L. R. 346 : 1925 Lah 315. 26 Cr. L. J. 1074.

S. 535. (Effect of omission to frame charge)

—this sec. is applicable to a case in which although a charge has been framed, but no charge has been framed of the offence which the accused has been convicted, 41 C L J 474 : 88 I. C. 1055 1925 Cal 926 : 26 Cr. L. J. 1279 *contra* 40 C 168 *below*.

S. 535. (Effect of omission to frame charge)—contd.

—the words “merely charged” mean a case where the offence being fairly taken, the court has framed a charge has been framed but the accused is convicted, the sec. does not apply. 40 C. 168.

—mere omission to frame charge in the absence of prejudice does not vitiate the trial. 1923 All. 476.

—the omission to frame a charge or irregularity in the framing of charge does not justify the reversal of the order of 53 C. 271; 259;

—where the accused was convicted under s. 379, I. P. C. and sentenced to pay a fine and on appeal the Dt. M. set aside the conviction under s. 379 but convicted the accused under s. 143 I. P. C. and maintained the sentence, held that as the defence in the two cases must be different the accused must have been prejudiced and the conviction was not maintainable. 54 C. 476; 31 C. W. N. 527; 1927 Cal 520; 28 Cr. L. J. 404. 101 I. C. 180, (26 C. 863, 30 C. 288, 40 C. 161) Ref.

—where the accused was convicted of rioting under s. 147 and evidence was directed towards actual assault by the accused, they could be acquitted on appeal of rioting and could be convicted under s. 323 I. P. C. though no charge was framed under that sec. as the accused would not be prejudiced thereby 1928 Pat. 359; 29 Cr. L. J. 374; 108 I. C. 333.

—omission to frame a charge afresh after sanction is obtained from the Dt. M. is cured by this sec. 4 L. B. R. 247.

S. 536 (Trial by jury of offences triable with assessors and vice versa).

—where a case triable with assessors is tried by jury who return a verdict of not guilty the judge cannot treat this verdict as opinion of assessors. 25 C. 555, 9 M. 42. 4 C. L. R. 405, but such procedure being mere irregularity can be cured under s. 536 Cr. P. C. 1927 M. W. N. 299.

—where a case triable by jury is tried without a jury, the defect is curable under s. 536. cl. (2). 99 I. C. 849; 28 Cr. L. J. 177; 1927 Nag. 117.

—the objection mentioned in sub-sec. (2) cannot be taken in appeal. 23 M. 632. 33 B. 423.

S. 537. Finding or sentence when reversible by reason of error or omission in charge or other proceedings.

N. B. (1)

(2)

(3)

S. 537. Applicability

—the sec. applies only to errors, *errors of procedure* of a formal nature and does not cover a substantial departure from the mode of conducting criminal trials 4 Lah 376

—the sec. refers to *errors of procedure and not of law* 4 B 203, 11 B H. C. R. 237, 13 M. L. A. 77 : 12 W. R. 32 P. C.

—“subject to the provisions hereinafore contained refers according to some authorities to the provisions of the whole Code, 22 C. 176, 23 C. 933 p. 993, but according to other authorities, to the provisions of this Chapter. 27 C 839, 19 C W N 972.

—the section refers to the “court of competent jurisdiction,” 23 C. 328, 10 B 319, 13 A 315, 23 C 412

—where a jury or the assessors are not properly selected it is not a “court of competent jurisdiction” 7 C W N 183, 26 A 211, 1894 A. W. N. 207, 21 M. 523 11 M. L. J. 241, 15 A 136, 15 B. 514, 21 A. 106.

—the words “in fact” have been introduced into the Code of 1898 in order to emphasise the duty of the court to go into the merits before interfering in consequence of a misdirection or other error. 26 M. 1.

—the test to be applied whether the particular infringement of the provisions of the Code is one which does not come within s. 437 is this “does not error go to the whole root of the trial? Does it in effect vitiate the proceedings? Has the court assumed an authority which it does not possess? Has it broken the vital rules of procedure?” If the error be of such a nature that the proceedings are vitiated in their inception s. 437 does not apply. But the mere fact that certain provision is imperative does not in itself indicate that a breach of such provision vitiates the whole proceedings. 20 A. L. J. 874 : 45 A. 124 : 71 I. C. 115 : 24 Cr. L. J. 67.

—the passage which begins with “unless such error etc” does not qualify (d) only but also other notes of the alphabet 45 Cr. L. J. 441 : 31 C. W. N. 271 : 100 I. C. 227 28 Cr. L. J. 259 . 29 Bom. L. R. 813 . 38 M. L. T. 64 : 1927 P. C. 44

—this sec may be taken to cover any irregularity in the widest sense of the term provided there has been no failure of justice. 1930 Cr. C. 186 : 1930 Mad. 186 : 31 L. W. 386, 5 Rang. 53 P. C.

Errors omissions or irregularities in the complaint.

—omission to examine complainant is cured by this sec. 11 M 443, 9 A 666, 63 P. L. R. 1900, but see 18 A. 221, and the M cannot dismiss the complaint without examining the complainant. 30 C 923 : 7 C W. N. 523.

—defective complaint under s. 124 A, not specifying the particulars is cured by this sec 32 M. 3.

—absence of a complaint in writing under s. 476 Cr. P. C. is not a mere irregularity but is an illegality which vitiates the trial. 100 I. C. 1044 : 1927 Nag. 184 : 28 Cr. L. J. 398.

—what this sec provides for is an error, omission or irregularity in the complaint and not the entire absence of a complaint without which no cognizance of the offence can be taken under the

S. 537. Errors, omissions or irregularities in the complaint—contd.

law, hence a case can be instituted under s. 195 Cr. P. C. without a complaint. 33 C. W. N. 285; 56 C. 824; 1929 Cal. 172; 116 I. C. 638; 30 Cr. L. J. 658; 49 O. L. J. 342, 1930 Cr. C. 585; 1930 Rang. 153.

—where the executive officer of a cantonment Board did not file his authority to lodge the complaint at the time of complaint it was a mere irregularity and did not vitiate the trial. 1928 Lah. 946; 29 Cr. L. J. 822; 111 I. C. 326

Errors &c. in summons or warrant

—a search-warrant issued illegally under s. 96 cannot be cured by this sec. 35 C. 1076; 12 C. W. N. 1075; 8 Cr. L. J. 235.

—warrant extended beyond the original date of return is illegal. 37 C. 122; 31 C. 424

—a person named in the warrant cannot delegate his power of executing it to his subordinate. 37 C. 122.

—where a fresh summons is issued without a fresh supplemental information, the defect is cured by this sec. 31 B. 611.

—signing not by full name but by initials is only an irregularity, and does not affect the validity of the proceedings. (The illustration to sec. 537 has now been omitted by the Amendment Act of 1923 but the law does not seem to have changed). 8 A. 293, 3 P. L. J. 493

—the recording of reasons for issuing warrant in summonsa casa is a necessary preliminary, and omission to do so cannot be overlooked and cannot be cured by s. 537. 38 M. 1088, 1918 P. L. R. 50; 19 Cr. L. J. 443 *contra* 18 A. L. J. 1149

—it accompanied by a copy of the proceedings were held to be as set aside. 17 M. L. J. 438, 19 M. W. N. 639, 1 Pat. L. T. 632, regularity is curable by sec. 537.

11 Bom. L. R. 740.

—omission to notify the substance of the warrant to the person arrested can be cured by s. 537. 18 Cr. L. J. 666 (All).

Error &c. in the charge.

—where the charge is defective under s. 234 Cr. P. C. having been presented out of time the defect cannot be cured by s. 537. 34 C. W. N. 959.

See other cases under ss. 221-239

Error &c. in the proclamation.

—an order of attachment with previous proclamation under sec. 87 is bad and cannot be cured by this sec. 22 A. 216.

—where the proclamation was made and was read and published in the places where the absconders were most likely to hear them, but a copy was not affixed to the court house, the flaw would in no way prejudice the proceedings but would be cured by s. 537. 1917 P. R. 39.

S. 537. Error of procedure.

—this sec. applies to mere errors of procedure arising out of inadvertence and not to substantive errors of law or to disregard or disobedience to mandatory provisions 49 A 475: 100 I. C. 371: 1927 All 350: 28 C. L. J. 291.

—whether a particular breach of procedure prescribed by the Code vitiates the whole proceeding or not depends upon the gravity of the breach and the consequences that are proved or presumed to have followed from it. 34 C. W. N. 296: 51 C. L. J. 171: 1930 Cal. 212: 123 I. C. 664 31 Cr. L. J. 536: 1930 Cr. C. 212

—the omission of the M. to give an opportunity to the petitioner to call evidence in rebuttal of the additional evidence and not hearing arguments was an illegality not curable under s. 537 Cr. P. C., 26 Punj. L. R. 312 87 I. C. 923.

—there is no authority for the view that the non compliance with a mandatory provision of the Cr. P. C. cannot under any circumstances, be cured under s. 537 The fact that s. 537 itself refers to errors and omissions in the proceedings suggests that there are cases in which a mandatory provision has not been complied with but to which s. 537 would apply. 3 Rang 139, 94 I. C. 717: 27 Cr. L. J. 669: 1916 Rang 53.

—if a M. refuses to issue process to accused's witness arbitrarily the order is illegal and cannot be cured by s. 537. 31 M. 131, 7 Cr. L. J. 425, 26 B. 418, 14 Bom. L. R. 360: 15 I. C. 725: 13 Cr. L. J. 523

—the absence of a Public Prosecutor in a particular case is at most an irregularity curable under s. 537. 35 P. R. 1887.

—the S. J. is bound under sub-sec (3) of s. 269 Cr. P. C. to take the opinion of all the jurors as assessors and failure to do so cannot be treated as mere omission or irregularity curable under s. 537. 26 M. 598: 2 Weir 333, 13 M. 426.

—where the judge fails to choose jurors by lot, the grave irregularity caused thereby cannot be rectified by s. 537. 9 I. C. 278. 8 A. L. J. 182: 33 A. 385: 12 Cr. L. J. 46.

—the manner of choosing by lot provided in s. 276 applies to juror attending in obedience to a summon and not to persons chosen from those present in court and the defects are cured by s. 537. 18 Cr. L. J. 15. 1917 M. W. N. 1.

—where ten jurors were summoned but only five attended and the court chose those five persons as jurors by drawing the lot from the names of the 10 jurors summoned and the accused raised no objection, held that if there was any irregularity it was cured by s. 537. 104 I. C. 897: 8 Pat. L. T. 800 28 Cr. L. J. 881.

—but the disregard of the express provision of a 326 Cr. P. C. requiring that eighteen persons should be summoned for the empanelling of the jury in a murder case is not a mere irregularity curable by s. 537. 33 C. W. N. 1051: 122 I. C. 558. 31 Cr. L. J. 426, so also when the case under ss. 120 B, 395, 399 and 402 I. P. C. required a jury of nine but the Judge believed seven to be the

S. 537. Error of procedure—contd.

required number, the trial held on that basis was vitiated, 34 C. W. N. 735 : 51 C. L. J. 578.

—it is the want of sanction required by s. 195 Cr. P. C. alone which is curable by s. 537. The absence of sanction required by any other provision of law cannot be remedied. 66 I. C. 657 : 23 Cr. L. J. 305

—want of sanction for an offence under s. 195 or the expiration of the time of sanction does not vitiate the trial if there was no failure of justice. 48 C. 867 : 66 I. C. 662, 23 Cr. L. J. 310 F. B.

—the failure to examine the complainant is an error of procedure and in the absence of inquiry or failure of justice it does not vitiate proceedings. 1 Rang. 517.

—the practice of obtaining written addresses from the counsels of both sides instead of hearing written addresses is generally bad but where the counsel waived the objection as to oral address there was no miscarriage of justice and the defect could be cured by s. 537 Cr. P. C. 1923 Bom. 557 : 30 Bom. L. R. 1530.

—where a M. who tried the case, wrote out the judgment signed and dated it but owing to physical disability asked another M. to read it out the procedure was only an irregularity cured by s. 537. 71 I. C. 525 : 24 Cr. L. J. 173 : 21 A. L. J. 137.

—the H. C. will not set aside a conviction on the ground of irregularity unless a failure of justice has resulted. 46 M. 253 : 71 I. C. 212 : 24 Cr. L. J. 84.

—the failure of the M. to comply with the provision of s. 112 Cr. P. C. constitutes mere irregularity which can be cured by this sec. 97 I. C. 652 : 27 Cr. L. J. 1132 : 1926 All. 767, but the omission to give substance of the charge in an order under s. 112 is not a mere irregularity when it is shown that objection was taken before the trial court and there has been a failure of justice. 1930 Mad. 859. 1930 Cr. C. 1035 : 1930 M. W. N. 696.

of s. 256 Cr.
J. 687 : 24
0 : 1929 Bom.

of inspection
if the omis-
27 Cr. L. J.

—joinder of two distinct offences in a single charge is an irregularity and does not vitiate the trial unless the accused is thereby prejudiced, 31 C. W. N. 337 : 45 C. L. J. 591 : 100 I. C. 827 : 28 Cr. L. J. 347 : 1927 Cal. 330, 32 C. W. N. 839 : 48 C. L. J. 138 : 1928 Cal. 700 : 117 I. C. 596 : 30 Cr. L. J. 799.

—but joint trial of several persons charged with offences not committed in the course of same transaction is an illegality which vitiates the trial. 100 I. C. 965 : 1927 Lah. 274 : 28 Cr. L. J. 357, 26 A. L. J. 623 : 1928 All. 417 : 113 I. C. 721 : 30 Cr. L. J. 214.

S. 537. Error of procedure—contd.

—non-compliance with s. 234 (1) is not a mere irregularity curable under this sec. 1930 Mad 508: 1930 Cr. C. 580. 127 I. C. 235.

—omission to draw up preliminary order under s. 145 cl (1) Cr. P. C. is not a mere error of procedure, consequently s. 537 does not cure the defect 49 A. 325. 1927 All 286. 23 Cr. L. J. 231: 99 I. C. 1031

—non-compliance with s. 242 in a summons case is an illegality which vitiates the trial and not a mere irregularity to be cured by this sec. 54 C. 359. 31 C. W. N. 167: 99 I. C. 411: 44 C. L. J. 575: 1927 Cal. 196, *contra* where failure of justice has not occasioned it is curable under s. 537. 101 I. C. 895: 1927 Nag. 210: 28 Cr. L. J. 511

—failure to question the accused at the close of the examination of witnesses, under s. 342 cannot be cured by s. 537. 28 O. W. N. 119. 38 C. L. J. 231 65 J. C. 618: 23 Cr. L. J. 154. 1 P. R. 1918. 45 B. 672. 31 Bom. L. R. 1134 1929 Bom. 447 1929 Cr. C. 559.

—failure of the M. to question the accused under s. 342 Cr. P. C. was under the circumstances of the case a mere irregularity curable by s. 537 if the accused was not prejudiced 1928 All. 222: 115 I. O. 872: 30 Cr. L. J. 530 26 A. L. J. 196, 10 Pat. L. T. 196.

—failure to examine the accused a second time under s. 342 after the examination of some additional witnesses is a mere irregularity if the accused is not prejudiced 10 Pat. L. T. 429: 1929 Pat. 64 110 I. C. 803: 29 Cr. L. J. 771, 7 Rang. 470: 1929 Cr. C. 507 1929 Rang. 331.

—where a trial is re-commenced on the claim of the accused of the privilege of an European British subject and the previous evidence is filed without the witnesses being examined afresh the illegality cannot be cured. 77 I. O. 425: 95 Cr. L. J. 377: 1924 Lah. 17

—In a summary trial if the M. instead of following the procedure prescribed for warrant case follows the procedure of summons case but the accused is not prejudiced thereby the trial is not vitiated. 1930 Sind 53 120 I. C. 526: 31 Cr. L. J. 123. 1930 Cr. C. 69, 1927 P. C. 44, *Ref.*, 29 Mad. 372 *Dist.*

—where the M. at first tried summons case as a warrant case, were recalled for cross-examination. it was a summons case cancelled 1 to cross-examine and convicted him, held, that the accused was prejudiced and retrial was necessary giving the accused opportunity to cross-examine. 82 I. C. 279: 25 Cr. L. J. 1271.

—where all the accused were charged under s. 342 I. P. C. and expressly acquitted under that sec. but some were convicted under s. 368 read with s. 103 I. P. C. the error in the procedure could not be cured by s. 537 Cr. P. C. 33 C. W. N. 891. 1929 Cal. 767: 1929 Cr. C. 479.

5. 537. Error of procedure—*contd.*

—the omission to serve on the accused a copy of the preliminary order is at the most only a defect curable under s. 537. 81 I. C. 170 : 25 Cr. L. J. 682 : 1925 Nag. 33.

—failure to record distinct finding before a complaint is made under s. 476 Cr. P. C. is an illegality and not a mere irregularity so as to be cured by s. 537 Cr. P. C. 1929 M. W. N. 229 : 1928 Mad 783 : 110 I. C. 588, 29 Cr. L. J. 732

—where the M. tried both the cross cases under the Factories Act summarily it was a mere irregularity curable by s. 537. 56 C. 400 : 32 C. W. N. 922 : 1928 Cal. 557 : 117 I. C. 673 : 30 Cr. L. J. 818.

—where a case triable with assessors is tried with less than the required number of them the defect is not curable by s. 537. 77 I. C. 811 : 25 Cr. L. J. 459 : 1924 Nag. 287

—where a case pending before a M. has become triable by the S. J. under the amendment but is still tried by the M. the illegality cannot be cured by this section. 85 I. C. 645 : 1925 Lah. 378 : 26 Cr. L. J. 549.

—non-compliance with the provisions of s. 436 Cr. P. C. is curable under s. 537 if no failure of justice had been caused. 8 Pat. 537 : 1929 Pat. 469 : 10 Pat. L. T. 725 : 1929 Cr. C. 353.

—where the order of remand directed the M. to take the deposition on commission but the M. himself recorded the evidence it was an irregularity curable by this sec. 1929 Lah. 104 : 30 Cr. L. J. 948 : 11 Lah. L. J. 370 : 118 I. C. 643

—s. 537 (a) does not apply to cases of disregard or disobedience of the whole of some mandatory provision of the Code
as to cases of failure to comply with some part of such compliance with the whole. 81

mandatory provision of law does
cedings, the real question being
o the accused. 1929 Mad. 544 :
33 Cr. L. J. 623 : 1929 Cr. C. 25,

—where a charge under s. 353 Cr. P. C. is framed as commit-
ultery or any other
improper as regards
was confined to the
cannot be said to
s. 537. 82 I. C. 50.

—disregard of the provision of sec. 233 Cr. P. C. is an illegality and not an irregularity that can be cured by s. 537 Cr. P. C. 119 I. C. 532.

—an omission to comply with s. 360 is an illegality which
sec. 41 C. L. J. 224,
119 : 39 C. L. J. 281,
a subsequent date and
with the provisions of

S. 537. Error of procedure—contd.

s. 360 was cured by s. 537. 33 C W. N. 661. 1929 Cal. 390: 122 I. C. 209: 31 Cr. L. J. 373: 1929 Cr. C. 26

—where there was strictly speaking two cases for not which practically formed one controversy and evidence received in one was treated as evidence in the other case and the counsels consented to the procedure, there was a mere irregularity curable by s. 537. 1923 All. 593, 59 A. 457: 26 A. L. J. 176: 114 I. C. 721: 30 Cr. L. J. 337.

—when compensation order was passed not at the time of discharging one of two accused but at the time of acquitting the other, s. 250 as amended was not complied with and this defect could not be cured by the sec. 29 C W. N. 127: 1925 Cal. 264: 26 Cr. L. J. 449: 85 I. C. 129.

—where two counter cases were tried by the same judgment it was held that although technically it might have been better to keep the evidence entirely distinct and to have delivered two separate judgments there was no injustice done in the case. 31 C W. N. 393: 45 C L. J. 418. 8 Lah. 193. 100 I. C. 126. 28 Cr. L. J. 254: 1927 P. C. 26. 1929 M. W. N. 68 P. C.

—failure to record reasons in granting pardon under s. 337 Cr. P. C. is merely an irregularity curable under this sec. 27 A. L. J. 237: 1929 All. 321.

—irregularity or illegality in the search does not vitiate the trial where the accused is not prejudiced thereby. 1929 All. 937: 1929 Cr. C. 665, 1929 All. 214 *fol*

—non-compliance with the provisions of sec. 139 Cr. P. C. is an illegality. 50 C L. J. 291: 1929 Cal. 813. 1929 Cr. C. 600, *contra*. It is an irregularity curable by s. 537 Cr. P. C. 33 C. W. N. 748: 1929 Cal. 507.

Error of judgment.

—where the M. pronounced the sentence and then wrote out the judgment on the same day, it was cured by this sec. 23 C. 502, 20 C. 353, 21 C. 121 *contra*, 27 M. 237, 14 A. 242

—where the judgment was not written in proper language the irregularity was cured by this sec. 4 C. L. J. 232. 4 Cr. L. J. 162.

—where a M. did not make an order in writing as required by s. 145 (1), s. 537 is sufficient to cure the defect. 81 I. C. 548: 26 Cr. L. J. 324 1925 Rang 111

—the want of a complete judgment in writing may be cured by s. 537 as provided in sub-sec. (4). 23 C. 502, 43 M. L. J. 369: 1922 M. W. N. 579 F. B.

—the omission to write a judgment before an accused is sentenced is only an irregularity curable by s. 537 unless there has been a failure of justice. 81 I. C. 193: 25 Cr. L. J. 705, 6 O. W. N. 1007.

—omission to embody the substance of the evidence in the judgment as required by s. 261 Cr. P. C. renders the conviction bad and it is not to be cured by s. 537 Cr. P. C. 1928 Bom. 433: 30 Bom. L. R. 934: 112 I. C. 22.

S. 537. Error of judgment—*contd.*

... written by and in the handwriting
 ... n. Cr. 545, 14 A. 242, but where it was
 ... the M. the procedure was held a
 ... 537, 4 C. L. J. 411. Recent amendment

—non-compliance with s. 265 Cr. P. C. is an illegality vitiating the trial. 57 M. L. J. 763; 30 L. W. 883, 1920 M. W. N. 787; 32 L. W. 280

Error &c as to misdirection, see s. 297 Cr. P. C.

S. 539. (Courts and persons before whom affidavits may be sworn.)

—a Deputy Magistrate has no power to administer oath to a person making an affidavit under this sec to be used in the H. C. and such person cannot be prosecuted for perjury for swearing to 'false affidavit' 14 C. 653.

—the Nazir of a Subordinate Judge's Court cannot administer oath to a person swearing to an affidavit to be used in criminal Court and consequently the deponent cannot be prosecuted under s. 193 I. P. O. 1929 Bom. 136; 116 I. C. 248; 31 Bom. L. R. 144; 30 Cr. L. J. 593.

—an affidavit sworn before a M. cannot be used in the H. C. 93 I. O. 963; 27 Cr. L. J. 499. 1926 Pat. 214 5 Pat. 110.

—but an affidavit to be used in Civil Court may be sworn before any M. by virtue of sec. 139 C. P. C. 8 C. W. N. 40 (note).

—an affidavit sworn before the Presidency Magistrate of Calcutta is not admissible in the Patna H. C. 1925 Pat. 755.

—as human beings are liable to make mistakes in reciting facts, the law requires that the contents of affidavits should be carefully read over to the deponents in the language which they understand and should be vouched by them to be correct. 36 A. 13.

—an affidavit must contain nothing but bare fact either personally or from information from a source believed to be correct and reliable. 36 A. 13.

For other cases on "affidavit" see 'Affidavit'

S. 539-B. (Local inspection)

—failure to comply with s. 539 B in connection with proceedings under s. 145, is an irregularity and does not vitiate the proceeding in the absence of prejudice 42 C. L. J. 131; 90 I. C. 308; 26 Cr. L. J. 1524; 1925 Cal. 1246, 40 C. L. J. 149 *below not fol.*

—a trying M. may visit the scene of an alleged offence to test the evidence he has heard in court and act on the opinion he has formed from what he has seen in adjudicating between the parties. 37 C. 340.

—where the M. did give previous notice of visiting the spot and the prosecuting inspector and the accused's pleader were both present during inspection, the mere non-service of the notice to the

S. 539-B. (Local inspection)—contd.

parties as required by the section does not vitiate the case. 99 I. C. 852 : 28 Cr. L. J. 160

—the court should in every case acquaint the parties with the opinion it has formed on local inspection and an immediate report of what is seen should be placed on the record laid open to the scrutiny of the parties. 37 C. 340, 3 P. L. T. 347, 1928 Lah. 479 : 110 I. C. 463 : 29 Cr. L. J. 719 : 10 Lah. 138.

—a M may make a local inspection not only for the purpose of understanding the evidence adduced in court but also for the purpose of testing it by the light of his own observations. He can use the testimony of his own senses for testing the veracity of the witnesses deposing before him as regards the feature of the locality. 37 C. 340 (355).

—but where the M. makes the local inspection for the purposes of obtaining information which does not appear from the evidence of the witnesses on the record the procedure is irregular and the whole trial is vitiated. 30 Cr. L. J. 491 : 115 I. C. 556

—a local inspection is permitted under this section only for the purpose of properly appreciating the evidence in the case and it cannot take the place of evidence itself. 49 A. 475 : 100 I. C. 371 : 1927 All. 350 : 28 Cr. L. J. 291

—taking into account the evidence of witness not recorded on oath is an irregularity not curable. 101 I. C. 671 : 1927 Nag. 250 : 28 Cr. L. J. 495

—when a court makes local inspection he should record the result thereof and ask the parties if they desire to adduce evidence and bear argument about the same. If after delivering judgment the court makes a note about the result of the local inspection it is irregular but does not vitiate trial unless the accused is prejudiced. 81 I. C. 193 : 25 Cr. L. J. 705 (C), 37 C. 340 *Ref.*

—the court making inspection of a spot must record a memorandum of the relevant facts observed by him. If he fails to do that the appellate court must exclude such portion of the judgment which is based upon such facts. 1929 Nag. 233 : 30 Cr. L. J. 333 : 114 I. C. 609 : 1929 Cr. C. 257, 10 Lah. 138 : 1928 Lah. 479 : 110 I. C. 463 : 29 Cr. L. J. 719.

..

.. inspection of the place
above case.

—where the M did not record the relevant facts observed at the time of inspection under s 539-B, held that the non-compliance with the provision of the statute will not nullify the proceedings unless the omission occasioned a failure of justice. 50 B. 680 : 97 I. C. 671 : 1926 Bom. 534 : 28 Bom. L. R. 1026 : 27 Cr. L. J. 1151.

S. 539-B. (Local Inspection)—*contd.*

—judicial officers cannot find out for themselves the facts of the case, they should decide it on the evidence properly produced before them. Where the M. went to the locality and had the land dug up at various places to see if it was grave-yard from the discovery of certain bones, the procedure was improper. 81 I. C. 602 : 25 Cr. L. J. 954.

S. 540. (Power to summon material witnesses or examine persons present).

—s 540 Cr. P. C. is very wide. 37 Cr. L. J. 137, but see 27 C. W. N. 675 : 37 C. L. J. 415 below.

—a witness summoned under s 540 can be examined by both parties. Suggestion of questions by the defence to the court and putting such questions through the court is not cross-examination. 47 A. 147 : 85 I. C. 719 : 26 Cr. L. J. 575 : 1925 All. 285

—the provision of sec 540 is very wide. The court may summon witness and if the prosecution declines to examine them, the court may, acting on its own initiative cause them to be produced. Such witnesses may thereupon be regarded as called under s. 540. 37 Cr. L. J. 173 : 71 I. C. 657 : 24 Cr. L. J. 193

—this section confers very wide powers upon the court, but the wider the powers the greater the exercise of discretion required of a Magistrate. 10 I. C. 123 : 1927 Mad. 361 : 28 Cr. L. J. 251.

—although the terms of the sec are very wide the M. should exercise their discretion thereunder very cautiously. When after hearing arguments the case was adjourned for judgment the examination of prosecution witnesses thereafter cannot be justified. 27 C. W. N. 675 : 37 C. L. J. 415 : 75 I. C. 541 : 24 Cr. L. J. 957, 1929 M. W. N. 395.

—if the court permits the prosecution to adduce rebutting evidence at the eleventh hour for the purposes of contradicting

J. 363, 1892 P. R. 4.

—this section is not controlled by s 342, therefore when a witness is examined by the court under this section after the witness for the prosecution has been examined and the accused had once been examined under s. 342, the court is not bound to examine the accused again under s. 342. 89 I. C. 842 : 26 Cr. L. J. 1418 : 1926 Lah. 154, 30 Bom. L. R. 1086 : 1928 Bom. 383.

—scope of the sec.—examination of witness after reserving judgment. 75 I. C. 541 (c). relied in 1928 Lah. 647 : 110 I. C. 676 : 10 Lah. L. J. 262 : 29 Cr. L. J. 740, which distinguishes 4 Lah. 376 and 1925 Lah. 531.

S. 540. (Power to summon material witnesses or examine persons present) —contd.

—it was not intended by this section that the M. should exercise his powers at the bidding of any person, but the powers are given to prevent any danger or miscarriage of justice owing to some particular witness not having been called 12 A. L. J. 15. The Public Prosecutor cannot demand as a matter of right to call and examine any witness not examined before the committing M. 14 A. 212.

—a M. cannot resort to the sec. in order to avoid the responsibility of making up his mind as to the value of the prosecution evidence 1886 P. R. 11.

—no M. other than the M. who has seisin of the case can summon witnesses under this sec. 36 A 13

—the court is bound to summon and examine any witnesses whose evidence seems to be essential. 6 C W N 98.

—where the prosecution overlooked an essential document it was the Judge's duty to have it admitted in evidence by calling a witness at any stage of the trial 57 M. L. J. 681. 1929 M. W. N. 901 : 1929 Mad. 837. 1929 Cr. C. 483 53 M 160

—where the prosecution declines to examine any witness, the court may on its own initiation cause them to be produced and examined. 37 C L J. 173

—an accused cannot be examined as witness even in appeal. 12 M 451

—when a Judge examines a witness under this sec. the accused as well as the complainant ought to be allowed an opportunity of cross-examining the witnesses. 5 C 614, 24 C 288 10 Lah 790. 1929 Lab 120, not being restricted to the points on which the witness has been examined by the Court, 35 C. 243, and the accused will not be deprived of this right even if he called the witness at first and then declined to examine him. 29 C. 357.

—where the accused is unable to attend personally owing to illness and is not represented by any pleader the court cannot proceed with the case by assigning him a pleader. 1929 Lab. 705 : 1929 Cr. C 351

S 540-A (Provisions for holding trials etc. in the absence of accused)

—where the accused was permitted to be absent to visit his
is made after the sanction
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case curable by s. 537 Cr.
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S. 541. (Place of Imprisonment)

—the term "prison" and "jail" do not include a police lock-up, so a M. has no power to sentence an accused to suffer imprisonment in a police lock-up 7 L. B. R 62 22 I C 154 : 15 Cr. L. J. 10.

S. 539-B. (Local inspection)—*contd.*

—judicial officers cannot find out for themselves the facts of the case, they should decide it on the evidence properly produced before them. Where the M. went to the locality and had the land dug up at various places to see if it was grave-yard from the discovery of certain bones, the procedure was improper. 81 I. C. 602 : 25 Cr. L. J. 954.

S. 540. (Power to summon material witnesses or examine persons present).

—s. 540 Cr. P. C. is very wide 37 Cr. L. J. 137, but see 27 C. W. N. 675 : 37 C. L. J. 415 below.

—a witness summoned under s. 540 can be examined by both parties. Suggestion of questions by the defence to the court and putting such questions through the court is not cross-examination. 47 A. 147 85 I. C. 719 : 26 Cr. L. J. 575 : 1925 All. 285

—the provision of sec. 540 is very wide The court may summon witness and if the prosecution declines to examine them, the court may, acting on its own initiative cause them to be produced. Such witnesses may thereupon be regarded as called under s. 540. 37 Cr. L. J. 173 : 71 I. C. 657 : 24 Cr. L. J. 193

—this section confers very wide powers upon the court, but the wider the powers the greater the exercise of discretion required of a Magistrate. 10 I. C. 123 : 1927 Mad 361 : 28 Cr. L. J. 251.

—although the terms of the sec. are very wide the Ms. should exercise their discretion thereunder very cautiously. When after hearing arguments the case was adjourned for judgment the examination of prosecution witnesses thereafter cannot be justified. 27 C. W. N. 675 : 37 C. L. J. 415 : 75 I. C. 541 : 24 Cr. L. J. 957, 1929 M. W. N. 395.

—if the court permits the prosecution to adduce rebutting evidence at the eleventh hour for the purposes of contradicting the defence evidence such course is permitted by s. 540 Cr. P. C. and s. 135 Evi. Act. 1930 Cal. 134 : 1930 Cr. C. 134 : 34 C. W. N. 170.

—the terms of sec. 540 are extremely wide and a court has, at any stage of an enquiry, trial or proceeding, power to examine any person as witness, if it thinks that the evidence is essential to the just decision of the case and the court can do it even after close of the prosecution and defence. 46 M. L. J. 325 : 34 M. L. T. 165 : 77 I. C. 290 : 25 Cr. L. J. 354 : 24 C. 167 : 21 C. C. 95 *contra*. 10 A. L. J. 383, 1892 P. R. 4.

—this section is not controlled by s. 342, therefore when a witness is examined by the court under this section after the witness for the prosecution has been examined and the accused had once been examined under s. 342, the court is not bound to examine the accused again under s. 342. 89 I. C. 842 : 26 Cr. L. J. 1418 : 1926 Lah. 154, 30 Bom. L. R. 1086 : 1928 Bom. 388.

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S. 54D-A. (Provisions for holding trials etc. in the absence of accused)

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S. 541. (Place of imprisonment)—*contd.*

—a criminal court passing a sentence of imprisonment cannot divide the imprisonment in different jails. *Ratanlal* 827.

S. 543. (Interpreter to be bound to interpret truthfully).

—oath need not be administered to an interpreter. *16 W. R. 61*, but it becomes necessary for the prosecution to prove that the interpretation of the deposition was made accurately. *36 C. 808*.

S. 544. (Expenses of complainants and witnesses).

—where a witness arranged with the complainant that he would appear in court provided his expenses were met by him and an order to that effect was also made by the trial Judge, held that the money could be recovered by suit and the power to grant expenses to a witness is vested under the General Rules of the H. C. and sec. 544 Cr. P. C. would not apply as it deals with altogether different state of things. *29 C. W. N. 1033; 50 I. C. 483*.

—where on the transfer of a trying M. the accused claims under s. 350 Cr. P. C. to have witnesses resummoned by the succeeding M. the witnesses should be resummoned without payment of any fees. *26 I. C. 135; 15 Cr. L. J. 687; 8 Bur. L. T. 43*.

—s. 544 and the Rules framed by the Local Govt. under this sec. give discretion to the M. in the matter of expenses of complainants and witnesses, but such discretion should be exercised not arbitrarily but on some principles. *9 Bom. L. R. 353*.

S. 545. (Power of court to pay expenses or compensation out of fine.)

—s. 545 cannot possibly apply to a case under s. 107 Cr. P. C. as no fine could be imposed in such a case, so an order directing the accused to pay a certain sum as costs to the complainant is *ultra vires*. *77 I. C. 878; 25 Cr. L. J. 476; 1924 All. 694*.

—where a person has been dealt with under s. 562 only and no fine is imposed on him, the court cannot direct him to pay compensation to the other party. *81 I. C. 940; 25 Cr. L. J. 1116; 1925 Oudh. 116*.

—a M. cannot, without imposing a substantive sentence of fine, order payment of compensation to the complainant. *2 Weir 715; Ratanlal 639, 146; 22 B. 717; Ratanlal 407*.

—if the accused is discharged or acquitted and no fine is imposed, no order under this sec. can be passed. *22 B. 717*.

—where the accused was convicted of cheating the complainant and obtaining jewels and pledging them, it is not competent to the M. to pay a portion of the fine as compensation to the pledgor, such an order is not contemplated by s. 545. *24 Bom. L. R. 382; 66 I. C. 997; 23 Cr. L. J. 341; 1925 Bom. 22*.

—the order cannot be made after passing the judgment. *11 W. R. 53; U. B. R. (1892-96) 80*.

—there is no provision for empowering a court to order payment of money as indemnity in a case of theft. *90 I. C. 151; 26 Cr. L. J. 1495; 1926 Nag. 89*.

S. 545. (Power of court to pay expenses or compensation out of fine—*contd.*

—expenses under the sec. should be directed to be paid out of the amount of the fine imposed and a separate order is improper. Rataolal 341 4 Bom. L. R. 877.

—an order for expenses to be paid in addition to the fine is illegal. 24 M. 305, 5 Bom. L. R. 126.

—award of costs cannot exceed the actual costs of the complainant. 3 C. L. R. 405.

—subsistence allowance and cart hire for prosecution witnesses cannot be ordered to be paid by the accused. U. B. R. (1892-96) 7, nor does expenses under this sec. include such expenses as are incurred in bringing the person of the accused before M. Rataolal 608.

—an order awarding compensation should show whether it is made to defray the expenses of the prosecution or as compensation for injury caused. U. B. R. (1892-96) 290.

—no sum exceeding the actual loss should be awarded. 5 L. B. R. 50 : 1923 P. W. R. 40.

—compensation must relate to the injury caused by the offence. U. B. R. (1892-96), Rataolal 407.

—when ordering compensation to be paid out of the fine imposed the court may order for the proportionate distribution of the amount realised. 26 I. C. 659. 16 Cr. L. J. 58 : 2 L. W. 22.

—the heirs of the deceased are entitled to compensation. 36 C. 302, 1898 P. R. 17. The names of the heirs must be mentioned in the order. 1913 P. R. 18.

—when conviction is set aside in appeal and a refund order is made but party refuses to refund it, remedy lies in civil court only. 2 Weir 717 *contra*, it may be recovered by a process under s. 517 1 A. 112.

—cl (c) applies to purchaser and not to a mortgagee or a transferee who has advanced money. The transferee will not be entitled to compensation. 24 Bom. L. R. 382 : 66 I. C. 112.

—the court can only order compensation to be defrayed out of the fine, substantial. 4 N. L. R. 131 :

S. 546. (Payment to be taken into account in subsequent suit).

—the expression "taken into account" does not mean that in a subsequent civil suit, at the time of awarding damages the amount of compensation recovered under s. 545 is to be deducted from the damages awarded in the suit. 72 W. R. 336 (civil).

S. 546-A. (Order of payment of certain fees paid by complainant in non-cognizable cases.)

—where the offence is not a non-cognizable one, an award of costs of the case to the complainant is illegal and opposed to this sec. 81 I. C. 985 : 25 Cr. L. J. 1161 (Oudh).

—the provisions of this sec. are not to be controlled by sec. 545 ; unlike s 545 the expenses awarded under this sec. are directed to be paid in addition to fine and not out of the fine imposed. 21 M. 305.

—the order of payment of court-fee is no part of the principal sentence in the case and is not to be treated as a fine added to a sentence of imprisonment so as to make the sentence appealable. 20 C 687, *contra.*, it is an integral part of the sentence. 21 M. 153, 5 M H C. R. App. 2K.

—if the complaint need not be stamped the fact of the payment of court fee illegally levied by the court cannot be a ground for ordering the accused to pay the fee on conviction. 8 B. H. C. R. 22, 16 M. 423.

S. 547. (Moneys ordered to be paid recoverable as fines).

—this sec. provides only a summary method for realising "money payable" and these words cannot be stretched so as to include live-stock or other goods 65 I C. 621, 23 Cr. L. J. 157 (Lab).

—an order of refund of compensation paid to the complainant under s. 543 may be enforced by process under this sec; no civil suit for the recovery of the money is necessary. 19 A. 112, 7 Mad. 563, 1884 P. R. 14, 6 A. 96. Itanlal, 213, 2 Weir 717.

—an order by the H C. setting aside an award of compensation to the accused must be deemed to be an order directing refund of the money and such order is enforceable under this sec. 1885 P. R. 12, 1903 P. R. 29.

S. 548. (Copies of proceedings)

—where the complainant is affected by the proceedings, he is entitled to a copy of the

—the trial court by which the trial does not proceed beyond the framing of charge. 1892 A W. N. 140.

—an accused is entitled to copies of documents and of his defence. 14 W. R 77.

—the record referred to is the magisterial record and does not exclude the information which leads to action under s 107 Cr. P. C. 1930 Mad. 975 : 1930 M. W. N. 1100 : 1930 Cr. C. 1191.

S. 550. (Power of Police Officer to seize property suspected to be stolen).

—the police officer must himself seize such property and cannot order any other person to detain it, 16 O. C. 371, and it authorises him to seize only suspected property and not other property mixed with the stolen property. 1909 P. W. R. 14.

5. 552. (Power to compel restoration of abducted females).

—the detention of a child in a missionary school against the will of her parent or guardian with a view to convert her to another religion would amount to unlawful detention. 16 C. 487

—the detention of a girl by the father in his house against the will of her husband does not amount to unlawful detention, unless it is shown that the detention was contrary to the wish of the girl. 15 Cr L J. 712 (c)

—the Dt M alone can entertain a complaint and make an order under this sec.; he has no power to transfer the case to a sub-magistrate. Ratanlal 563.

—^{ss} 200 and 203 Cr. P. C. do not apply to a proceeding under this sec. 4 Bom. L. R. 609

—an application to get back a girl from her father's custody on the allegation that she is the wife of the applicant must be made to civil court and not to the criminal court. 10 C. W. N 75 (note).

S 655. (Forms)

—the words of this sec are not intended to supersede the provision of sec 90. 38 C L. J. 77 F. B. 35 C. 789 overruled.

—where M. adopted a form under s. 96 to the provision of sec. 100 by altering the figures and by drawing up the warrant in terms required by s. 100, it was perfectly legal. 44 C. 905.

S. 556. (Case in which Judge or M. is personally
interested).

—where the prosecution is directed by the M. in his capacity as a member of a local body he is "legally interested" in the matter and is disqualified from trying the case. 1929 Lah. 718 : 1929 Cr. C. 310 : 30 Cr. L. J. 698 : 116 I. C. 881 : 30 Punj. L. R. 706.

holder in a company cannot
282 of the Companies Act
s sec. 53 B. 716: 1929 Bom.

—a S. J. is not prohibited to law from hearing an appeal from a conviction by a M. J. which as an Insolvency Judge he allowed the prosecution to proceed. 21 A. L. J. 90: 71 L. Q. 363: 24 Cr. L. J. 144.

—where the S. J. made complaint under s. 476 to the M. and the M. dismissed the complaint the S. J. cannot hear revision against the order of discharge. 99 I. C. 85: 1927 Bom. 35: 28 Cr. L. J. 53, (15 Bom. L. R. 101, 27 A. 25, 37 C. 221) *Ref.*

—In cases when the court makes local inspection the M. should record the result thereof and ask the parties if they desire to adduce evidence and hear arguments about the same. When after delivering judgment, the court makes a note of the result of the local inspection the procedure is irregular but it is not sufficient to vitiate the trial if the accused is not prejudiced. 81 I. C. 193; 25 Cr. L. J. 705; 1925 Cal. 353.

S. 556. (Case in which Judge or M. is personally interested)—contd.

—a Magistrate is competent to inspect a place in order to understand the evidence, but if he receives an impression in favour of one party he should give the other party opportunity to explain away that impression if possible. 1928 Mad. 494; 54 M. L. J. 442; 29 Cr. L. J. 539; 1928 M. W. N. 69; 109 I. C. 363.

—where the M. went to make a local inspection not to understand evidence but to create evidence and introduced it into the case he acted without jurisdiction. 1929 Pat. 160; 116 I. C. 767; 30 Cr. L. J. 652, the local inquiry conducted by the M. does not necessitate transfer but there may be circumstance under which it would be advisable to direct a transfer. 31 Cr. L. J. 555; 1930 A. L. J. 606; 123 I. C. 685.

—a court which directs or sanctions a prosecution is not always precluded from trying the offence or hearing appeals. 1924 Nag. 23; 89 I. C. 1049; 26 Cr. L. J. 1481.

—the M. is not debarred from taking cognizance of a case even though he has taken some part in the initiation of the proceedings in obtaining sanction under s. 195, 50 C. 135; 26 C. W. N. 878; 36 C. L. J. 180.

—the mere fact that the M. has issued a search warrant before the institution of the case does not debar him from trying the case within this section. 95 I. C. 319; 27 Cr. L. J. 783; 1926 All. 428.

—pecuniary interest of the M. even to a small extent is disqualification independently of the question of bias. 53 B. 716; 31 Bom. L. R. 925; 1929 Bom. 404; 1929 Cr. C. 433.

—if a M. is in close business or in friendly relationship with the party it is undesirable that he should try the case. 8 Pat. 575; 1919 Pat. 151; 10 Pat. L. T. 711; 116 I. C. 762 F. B.

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526 Cr. P. C., Transfer."

S. 557. (Practising pleader not to sit as Magistrate in certain courts)

—there is no bar to a pleader to act as Presidency M. the only thing required of him is to give up practice. 23 B. 490.

—if a pleader practises in the Honorary Magistrate's court or in the township Magistrate's court within whose jurisdiction that court is, he cannot sit as a M. in the Honorary Magistrate's court. 25 Cr. L. J. 211 (Cr.)

S. 559. Provisions for powers of Judges and Magistrates being exercised by their successors in office.

—under this amended section a complaint under s. 195 regarding an offence in connection with a proceeding in a Magistrate's court can be made by the successor in office. 95 I. C. 312; 1926 Lah. 305; 27 Cr. L. J. 776; 27 Punj. L. R. 314.

S. 561. (Special provisions with respect to offence of rape by a husband).

—where the D. M. had taken cognizance of an offence referred to in clause (a) of this section the fact that the investigation into the offence was conducted by a subordinate Police-officer was not a material irregularity. 1895 A. W. N. 9.

S. 561 A. (Saving of inherent power of H. C.)

—the H. C. can penalise if frivolous and vexatious application for transfer are resorted to as a means of preventing the ends of justice. 32 Bom. L. R. 1123; 1930 Bom. 477 F. B.

—the court could not pass an order under sec. 561-A which would conflict with the provision of sec. 86 Cr. P. C., in the exercise of its inherent power. A court cannot order restoration of property where the application is made beyond the period prescribed by s. 89. 26 Bom. L. R. 719; 82 I. C. 365; 25 Cr. L. J. 123; 1924 Bom. 435.

—the H. C. has inherent power to order the S. J. to expunge remarks made by him in the order of bail if such remarks are likely to prejudice the M. in the impartial trial of the case. 1925 Nag. 228; 82 I. C. 755; 25 Cr. L. J. 1363; 1925 Nag. 228.

—this section recognises the inherent power of the H. C. to make such orders as may be necessary to prevent abuse of the process of the Court, to expunge remarks against witness or accused. But it is intended for cases of exceptional circumstances and should be exercised very sparingly. 93 I. C. 974; 1926 Lab. 382; 27 Cr. L. J. 510; 49 A. 254; 27 Cr. L. J. 1407; 98 I. C. 719; 1927 All. 193.

—the H. C. has inherent power to order deletion of passages from the judgments of the subordinate Courts which are irrelevant or inadmissible and adversely affect the character of persons before the court. Duties of the trying Courts defined. 1928 Lab. 740; 109 I. C. 12; 29 Cr. L. J. 620; 29 Punj. L. R. 461; 9 Lah. 269.

—the H. C. has no inherent power to alter or review its own judgment once it has passed it, except in cases where it is passed without jurisdiction or in default of appearance. 1928 Lah. 463; 110 I. C. 221; 29 Cr. L. J. 669; 30 Punj. L. R. 247; 10 Lab. 1, 34 C. 860 *Ref* 1927 Lah. 139 *Diss.*

—the words "or otherwise to secure the ends of justice" do not give the H. C. an unrestricted or undefined power to make any order which it might please to consider, it is in the interests of justice. The inherent powers of the H. C. are as much controlled by principle and precedent as are its express powers by statute. 1928 Lah. 462; 29 Cr. L. J. 669; 110 I. C. 221.

—this sec. does not confer on the H. C. any new powers but merely provides that such inherent powers which the court may possess shall not be deemed to be limited or affected by anything contained in the Code. 1928 Lah. 462; 110 I. C. 221; 29 Cr. L. J. 669; 10 Lab. 1; 30 Punj. L. R. 247.

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—the court could not pass an order under sec 561-A which would conflict with the provision of sec 86 Cr. P. C., in the exercise of its inherent power. A court cannot order restitution of property where the application is made beyond the period prescribed by s. 89. 26 Bom. L. R. 719; 82 I. C. 365. 25 Cr. L. J. 123 1924 Bom. 495.

—the H. C. has inherent power to order the S. J. to expunge remarks made by him in the order of bail if such remarks are likely to prejudice the M. in the impartial trial of the case 1925 Nag. 228; 82 I. C. 755; 25 Cr. L. J. 1363; 1925 Nag. 228.

—this section recognises the inherent power of the H. C. to make such orders as may be necessary to prevent abuse of the process of the Court, to expunge remarks against witness or accused. But it is intended for cases of exceptional circumstances and should be exercised very sparingly. 93 I. C. 974 1928 Lah. 382; 27 Cr. L. J. 510, 49 A. 254; 27 Cr. L. J. 1407; 98 I. C. 719 1927 All. 193.

—the H. C. has inherent power to order deletion of passages from the judgments of the subordinate Courts which are irrelevant or inadmissible and adversely affect the character of persons before the court. Duties of the trying Courts defined. 1928 Lah. 740; 109 I. C. 12; 29 Cr. L. J. 620; 29 Punjab L. R. 461; 9 Lah. 269.

—the H. C. has an inherent power to alter or review its own judgment once it has passed it, except in cases where it is passed without jurisdiction or by default of appearance. 1928 Lah. 462; 110 I. C. 221; 29 Cr. L. J. 669; 30 Punjab L. R. 247; 10 Lah. 1, 34 C. 860 Ref. 1927 Lah. 139 Diss.

—the words "or otherwise to secure the ends of justice" do not give the H. C. an unrestricted or undefined power to make any order which it might please to consider, it in the interests of justice. The inherent powers of the H. C. are as much controlled by principle and precedent as are its express powers by statute. 1928 Lah. 462; 29 Cr. L. J. 669; 110 I. C. 221.

—this sec. does not confer on the H. C. any new powers but merely provides that such inherent powers which the court may possess shall not be deemed to be limited or affected by anything contained in the Code. 1928 Lah. 462; 110 I. C. 221; 29 Cr. L. J. 669; 10 Lah. 1; 30 Punjab L. R. 247.

—the inherent jurisdiction of the court cannot be invoked to do any Act which would conflict with any provisions of law or

S. 561-A. (Saving of inherent power of H. C.)—contd.

the general principles of criminal jurisprudence. 1929 Lah. 705 : 1929 Cr. C. 351, 1930 Nag. 61 : 31 Cr. L. J. 284 : 121 I. C. 651 : 26 N. L. R. 50.

—where the Police deny the accused the right of interviewing his legal adviser, the H. C. may interfere under this section and allow the accused such access from the moment of his arrest. 50 B. 741 : 1926 Bom. 551 : 97 I. C. 901 : 27 Cr. L. J. 1169.

—the H. C. has inherent power under this section to stay the criminal proceeding pending the civil proceeding based on the same document. 97 I. C. 426 : 27 Cr. L. J. 1114, 30 Bom. L. R. 963 : 112 I. C. 477 : 29 Cr. L. J. 1053.

—the H. C. can grant bail in a case disposed of by that court when appeal is to be preferred or is pending in the Privy Council. 49 A. 247 : 98 I. C. 593 : 27 Cr. L. J. 1377 : 1927 All. 97.

—the H. C. should not give directions regarding dispensing of evidence or putting short this evidence. 1930 Lah. 465 : 31 P. L. R. 207 : 123 I. C. 280 : 1930 Cr. C. 533 : 31 Cr. L. J. 482.

—the H. C. has inherent power to interfere, independently of this code, with the wrongful search of a house by any officer of the Crown. 1928 All. 756 : 10 A. I. Cr. R. 450 : 51 A. 377 : 30 Cr. L. J. 62 : 113 I. C. 78 : 27 A. L. J. 57.

—under the provisions of s. 561 A the appellata court has no power to entertain an appeal beyond the time allowed by the Limitation Schedule. 31 Cr. L. J. 381 : 122 I. C. 257.

S. 562. (Power of court to release under probation of good conduct).

—the terms of the amended section are wide enough to include all offences whether under the Penal Code or any other law. 93 I. C. 702 : 1926 Lah. 317 : 27 Cr. L. J. 478, 94 I. C. 129 : 1926 Lah. 166 : 27 Cr. L. J. 561, *contra*, 93 I. C. 992 : 1926 Bom. 230, 52 B. 250 : 30 Bom. L. R. 375 : 1928 Bom. 152 : 109 I. C. 502 : 29 Cr. L. J. 566. In this last case it has been held that this sec. cannot be invoked in a prosecution under the Bombay Cities Municipal Act.

—this sec. should not be applied to the case of people in possession of cocaine and other dangerous drugs in defiance of Excise Act. 1930 All. 19 : 120 I. C. 264 : 31 Cr. L. J. 32 : 1930 Cr. C. 35.

—a convicted person has a right of appeal from an order under cl. (1) of sec. 562. 41 C. L. J. 45 : 52 C. 463 : 29 C. W. N. 151 : 85 I. C. 135 : 26 Cr. L. J. 455 : 1925 Cal. 329 (1 Cr. L. J. 543, 1 Cr. L. J. 1098, 18 Cr. L. J. 400, 37 All. 31) *Ref.*

—clause (1) contemplates only offences primarily punishable
cases of fine only. 97 I. C.

has been passed a sentence
C. 910 : 10 Lah. 722 : 1930

—s. 562 is intended primarily for the first offenders but the words used "and no previous conviction is proved against him" seem

S. 662. (Power of court to release under probation of good conduct)—*contd*

to preclude the idea of an inquisition into the part of the accused. If no previous conviction is proved at the trial a subsequent discovery of a conviction of this type is no ground to interfere in revision. The law is no respecter of persons but the terms of sec. 562 (1) (a) are wide in character and antecedents of an

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C. 76.

... id with s. 149
I. P. C. it appeared that the older men engaged in the case were in some cases relatives of the young lads and that it was just possible that some of them might have taken some part in the occurrence which did not amount to very much, held that under the circumstance the accused might be dealt with under this section. 44 C. L. J. 208; 99 I. C. 38; 1927 Cal. 73 28 Cr. L. J. 6.

—an order under this section directing release cannot be said to be a punishment. 1924 Neg. 37; 22 Neg. L. R. 166.

—s. 562 Cr. P. C. does not apply to a case under s. 411 I. P. C. 85 I. C. 35; 26 Cr. L. J. 419; 1 Pat. L. R. 174; 1923 Pat. 297.

—the statutory deprivation of a general right of appeal must always be construed strictly. Where there is an appeal on behalf of the convicted person against whom an order under s. 562 (1) was made, by the operation of s. 415-A, there is a right of appeal in the other persons convicted with the former. 41 C. L. J. 45.

—a M. of the second class has jurisdiction to pass an order under s. 562. The proviso in sub-sec. 1 of s. 562 must be read as a

... of sub-section 562 (1) (a) ...

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CRIMINAL PROCEDURE CODE
S. 562. (Power of court to release under probation of good conduct)—*contd.*

—when the accused has already been placed on probation of good conduct on a previous conviction a sentence in a second sentence by which he is again placed on probation of good conduct is illegal 1931 Bom. 176. 1930 Cr. C. 552: 32 Bom. L. R. 356.

—no order under s. 562 directing release upon probation of good conduct cannot be said to be a punishment. 74 I. C. 66: 24 Cr. L. J. 738.

—where the H. C. on appeal from a conviction by the Presidency M. directed release of the convict on execution of a bond with two sureties for good behaviour but the accused failed to furnish the security ordered, held that the effect of the order of the H. C. was the release of the accused by the M. himself on probation of good conduct. 86 I. C. 59: 1925 Mad. 496. 26 Cr. L. J. 683.

—the word "misappropriation" covers ss. 404 and 405 I. P. C. as well as s. 403 and the word "cheating" covers ss. 418, 419 and 420 as well as s. 417. 71 I. C. 795: 24 Cr. L. J. 251: 1923 Nag. 158

—in exercising the special power under s. 562 the danger to the public and to the accused himself have to be guarded against. If the offence indicates not mere thoughtlessness but criminality also, such as a combination of design, ingratitude and a general character of craft and deceit, resort should not be had to the powers under the sec. 81 I. C. 152: 25 Cr. L. J. 1224: 1925 Sind. 75

—in passing sentences at least two things are necessary to guard against, viz., (1) danger to the public (2) danger to the accused himself. The public must not be led to suppose that all juvenile offenders may commit any crimes that they like without any fear of punishment because that of course would be an incentive to crime and would lead to the bringing up of their children into a life

ly to ss. 106 and 118 and

does not come within s. 562: 1927 Lah. 735.

—where a youth of 18 entices away a widow of 16 who is honorably marrying her and does not attempt to seduce or ill-treat her and is charged under s. 366 I. P. C., held that it was precisely for this sort of case that sec. 562 was enacted. 1929 All. 930 1929 Cr. C. 658.

... charged under s. 307 as that sec. is transportation to rigorous imprisonment. 30 Cr. L. J. 783.

—an accused who has deliberately committed perjury to secure his acquittal is not entitled to be released under this sec. 1928 Lah.

... murder is not entitled to be released under this sec. 31 Pooj. L. R. 115: 10 Lah.

S. 565. (Order for notifying address of previously convicted offender)—*contd.*

—the provisions of the sec. 221 (7) do not apply to an order under this sec. and such an order can be legally passed without the previous conviction, on which it is based, having been mentioned in the charge. The omission is merely an irregularity curable by s. 537. 9 N. L. R. 88.

Conspiracy, see "*Evs. Act s. 10*" and "*J. P. C. Ss. 120 A and 120 B.*"

CROSS-CASES

—where there are cross-cases arising out of the same incident, they should not be heard at one and the same time, and the evidence in one case should not be considered in another. The trial of each case should be distinct. 39 O. L. J. 331; 81 Ind. C. 557; 25 Cr. L. J. 941, 13 Bur. L. T 245.

—there is no foundation for the view that Police case should have precedence over a cross-case. The two cases should ordinarily be tried simultaneously and contemporaneously but should be dealt with wholly separately from each other, each on its own merits. 28 C. W. N. 487; 83 Ind. C. 625.

—simultaneous trial of cross-cases separately is legal. 8 C. W. N. 344, (25 M. 61 P. C., 13 C. L. R. 275) *Dist. 11 Bom. L. R. 740*; counter-cases should be tried by the same M. and not by separate Ms or simultaneously. 27 C. W. N. 700, 14 C. 358 *Ref*

—cross-cases should not be tried together. 14 C. 358, *contra* 20 C. 537.

—simultaneous trial does not vitiate trial if the accused is not prejudiced in his defence. Where the judgment in each case is based on findings arrived at entirely upon the evidence in that case without any reference to the evidence in the other case, the simultaneous trial cannot be said to have prejudiced the parties. 21 Cr. L. J. 739. 1 Pat. L. T. 498; 58 I. C. 213.

—when in respect of a riot between two factions there were two cross-cases and a joint trial was held, the prosecution evidence in each being treated as the defence evidence in the other, the procedure was illegal. 81 I. C. 39; 1925 Lab. 149.

—cross cases should be tried one after the other. 27 C. W. N. 700; 37 C. L. J. 410; 75 I. C. 364; 24 Cr. L. J. 940; 1923 Cal 644.

J. 83

—both the cases must be tried by one and the same court. Simultaneous trial of two counter cases in two different courts is undesirable and unsatisfactory. 37 O. L. J. 410; 27 C. W. N. 700; 75 I. C. 364.

EASTERN BENGAL AND ASSAM DISORDERLY HOUSES ACT.

—s. 6 of the Act creates an offence under a local law, and proceedings relating to such offence should be taken under s. 190 Cr. P. C. 16 C. W. N. 1049 13 Cr. L. J. 691: 16 I. C. 499.

—s. 7 is an enabling sec and is not a necessary part of the procedure of the Act prior to prosecution being instituted. It is not necessary to have recourse to that section if the M. can be satisfied in other ways that the nuisance complained of is continuing. *above case*

—where a M. authorised an Inspector of Police to enter and inspect the houses and the Inspector asked the Sub-Inspector to make the inquiry, the M. had no jurisdiction to take cognizance of the case on the Sub-Inspector's report. *above case*.

—in the above case the M. could either treat the Sub-Inspector's report as a complaint under s. 190 (a) in which case he would have to call upon the Sub-Inspector to appear and substantiate the report on oath, or under s. 155 direct the police to investigate the case and submit a charge sheet if they thought proper. *above case*

—where the Sub-Inspector stated in his report that he was satisfied that a woman "was going on with her profession of prostitution" but did not say that she was using her house to the annoyance of the inhabitants of the vicinity, held, although the report might furnish a basis to the M. to call upon the Sub-Inspector to dispose on oath as complainant, the report itself did not disclose a complete case under s. 2 of the Act. *above case*.

—the District M. has no power either under the Eastern Bengal and Assam Disorderly Houses Act or any other law to interfere with an order passed by a criminal court in the exercise of its jurisdiction under s. 3 of the Act. 45 C. 301: 21 C. W. N. 1135: 18 Cr. L. J. 736: 40 I. C. 738: 27 C. L. J. 89.

—proceedings under the Eastern Bengal and Assam Disorderly Houses Act are not governed by the Cr. P. C. and it is not necessary for the M. to act only on legal evidence or to administer oaths, but before passing an order under sec 3 the M. must satisfy himself not only that the houses are used as brothels or for the purposes of habitual prostitution or as disorderly houses but he must further find an additional fact to bring it within the provisions of cls. (a), (b) or (c) of sec 2 of the Act. 30 C. W. N. 91.

EVIDENCE ACT.

Scope of the Evidence Act.

—the Evidence Act is a separate statute and its provisions are independent of the rules of procedure contained in the Criminal Procedure Code. 94 I. C. 901: 1926 Lah. 88: 27 Cr. L. J. 709: 27 Punj. L. R. 583.

S. 3. (interpretation clause).

Court.

—the definition of the word "court" is framed simply for the purpose of this Act. 12 B 36

—the word "court" includes both the Judge and the Jury. The definition is not meant to be exhaustive. 4 C. 483 F. B.

—a M holding a preliminary inquiry under s. 164 Cr. P. C. in a Police investigation does not exercise the function of a Court. 11 B. 702.

—it includes Commissioners taking evidence under the Civil or Criminal Procedure Code. 15 M. 138.

Fact.

—the only sense in which in interpreting the Statute the word "fact" can be understood is that given by the definition. 7 A. 385 F. B.

Relevant.

—relevant means admissible 3 C. W. N. 263 (note).

Evidence.

—it is so defined for the purpose of the Act only. 4 C. 492 and it is exhaustive for that purpose. 2 L. B. R. 272.

—statement of accused is not evidence within this definition. L. B. R. (1893-1900) 368.

—the word "evidence" signifies only the instruments *i. e.* witnesses and documents by means of which relevant facts are brought before the court. 1930 Nsg. 242. 1930 Cr. C 818 : 26 N. L. R 229.

—it is most unfortunate that the Indian Law of Evidence does not permit an accused person to depose in support of his defence. 1929 Pat. 145 : 116 I. C. 756 : 30 Cr. L. J. 646

Proved.

—the s. embodies a sound rule of common sense. 6 C. W. N. N. 495, 1 C. W. N. 682, 22 C. 391.

—where there is sufficient evidence of a fact, it is no objection to its proof that more evidence might have been adduced. 9 M. L. A. 506 : 1 W. R. 25 P. C. .

—the meaning of the expression "proved" as defined in s. 3 is in no way affected by the incidence of the burden of proof. 50 C. 318

—"proved" means that it is so probable that a person should, as reasonable man, act upon it; a fact need not be proved with anything

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S. 5. (Evidence may be given of facts in issue or relevant facts).

—under the Evl. Act admissibility is the rule and exclusion is the exception 16 B. 661.

—it is clearly the duty of the Judge apart altogether from any objection by the parties to exclude all irrelevant evidence. 5 Pat. L. J. 410. 1921 Pat. 17. 57 I. C. 561.

—unconnected instances of the same firm in subsequent years the same firm in subsequent years the Evl. Act 6 C. 655; 8 C. L. J. 12 Cr. L. J. 611, U. B. R. 1897-1901.

—witnesses may be examined other witnesses under ss. 5, 11 and their credit. 11 B. H. 167.

S. 6 (Relevancy of facts forming part of same transaction).

—where a prisoner, a booking clerk committed criminal breach of trust in respect of certain sums, his confessions before the Traffic Manager would be admissible under this s. 9 B. H. C. 358.

—a certain witness in a case of abduction gave evidence that he had seen 3 women who were sleeping in the same *bari* as complainant and his wife that night, searching for something at dusk. These women were not examined as witnesses and when the witness was asked as to what reply one of the women gave and the witness was not able to answer and the Sessions Judge excluded such evidence, he'd that the search could not be treated as part of the same transaction as the abduction at night and that ss. 6, 8, 9 were not applicable. 42 C. L. J. 111; 90 I. C. 433; 26 C. L. J. 1553. 1926 Cal. 105.

—where in a rape case the defence relied on a statement by the mother of the girl to the effect that the girl had told her that she was bitten by a leech, the statement was not substantive evidence though it could be used to corroborate or contradict the statement made by the girl. 50 C. L. J. 524; 1930 Cal. 132; 1930 Cr. C. 132.

—statement of a woman raped is not admissible in evidence under s. 6 but may be admissible in evidence as complaint under s. 8. 4 Lab. L. J. 491.

—where a woman raped made a statement to her relative shortly after and committed suicide three days after, her statement was not admissible under this sec. 1930 M. W. N. 702.

—hearsay evidence of the statement of a bystander as to an occurrence would be admissible as a part of the *res gestae* only if it was made at the time the transaction was taking place or so shortly before or after it as to form the same transaction. 4 C. W. N. 265; 5 Cr. L. J. 71, 10 C. 302 Dist.

—statement by injured person to a third person in the presence of the accused who did not deny it, is admissible. 10 C. 302.

S. 6. (Relevancy of facts forming part of same transaction)—contd.

—this S. gives statutory recognition to a well known rule of law, that facts which form part of the *res gestæ* are admissible in evidence. 34 P. R. Cr. 1914: 27 Ind. C. 664: 16 Cr. L. J. 184.

—where the offence under trial is filing a false complaint, what happened of the complaint at the subsequent Police investigation, forms no part of *res gestæ*. 48 M. 640: 86 I. C. 209: 1925 M. W. N. 68.

—the statement of a person not examined as a witness through the mouth of a witness cannot be evidence as part of the *res gestæ*, if the statement though made at the time of the occurrence was not in respect of the occurrence itself but with regard to an event which took place a year ago, which was altogether a different event. Nor would it be admissible under s. 8 as it would be purely hearsay evidence. 42 C. L. J. 504: 1926 Cal. 139: 92 I. C. 442: 52 C. 272.

S. 7. (Facts which are occasion, cause or effect of facts in issue).

—circumstantial evidence to be relied upon must not merely point to the inference to be drawn but it must be of such a nature that it can possibly lead to no other inference. 56 C. 738: 33 C. W. N. 211: 1929 Cal. 37: 116 I. C. 378.

—when the case depends largely on the inference to be drawn from circumstances it is necessary that the facts should be considered as a whole as well as in relation to each other. 33 C. W. N. 439: 1929 Cal. 533: 119 I. C. 116.

S. 8. (Motive, preparation, previous or subsequent conduct).

—answer given by an accused person to his superior in explanation of an official irregularity can be proved against him, if subsequently ascertained to be false. 4 Bom. L. R. 284.

—a motive is that which moves a man to do a particular act. 62 I. C. 545.

—evidence of motive only can never supply the want of reliable evidence, direct or circumstantial, of the commission of the crime. 94 I. C. 901: 1926 Lah. 88: 27 Cr. L. J. 709: 27 Punj. L. R. 583.

—the signs cannot be regarded as conduct, within the meaning of this sec. as the signs taken alone without the questions, cannot be connected with the cause of the death. 7 A. 385: A. W. N. 1885 78 F. B.

—the conduct and acts of the accused are not dealt with in S. 27 and are admissible under this sec. 6 A. L. J. 839: 31 A. 392: 10 Cr. L. J. 212: 12 Cr. L. J. 119: 9 Ind. C. 718: 48 L. R. 209.

—the mere fact that the accused pointed out the several places of incident narrated by the approver is not admissible as evidence of conduct. 1929 Lah. 794: 1929 Cr. C. 426: 121 I. C. 497: 31 Cr. L. J. 269.

S. 8. (Motive, preparation, previous or subsequent conduct)—*contd.*

—the gesticulations of deaf mutes at the place where the dead body was found during Police enquiry cannot be admissible against the accused as conduct under this section. 5 O. C. 246.

—a first information report against an accused is admissible in evidence under this section as part of the informant's conduct. 54 C. 237 44 C. L. J. 253 : 1927 Cal. 17 : 59 I. C. 227 : 1927 Cal. 17 : 28 Cr. L. J. 99

—where the child on whom the rape was committed refused to make any statement, statement of the mother as regards the answers given by the child in reply to questions put to her could not be admitted in evidence 31 Punj L. R. 391 : 1930 Lah. 84 : 31 Cr. L. J. 141 1930 Cr. C. 100 : 120 I. C. 539

S. 9. (Facts necessary to explain or introduce relevant facts).

—a comparison of thumb impressions is admissible under this sec if the similarity of these impressions can establish the identity of a person who is charged with forgery. 1 C. W. N. 33, 3 N. L. R. 1 : 5 Cr. L. J. 220 9 C. W. N. 320

—an absconding shows that the absconder is concerned in the crime, so anything which tends to explain his conduct is relevant under this sec. 62 I. C. 545.

—evidence of Magistrate conducting identification parade may be used to corroborate identifying witness's evidence. 47 A. 39 : 1925 All. 223

S. 10. (Things said or done by conspirator.)

—the application of the sec. is strictly conditional upon there being a reasonable ground to believe that two or more persons have conspired to commit an offence. 37 C. 467 : 14 C. W. N. 1114 : 10 C. L. J. 453 7 Ind. C. 359 : 30 C. 983 : 1930 M. W. N. 1249

—a conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. So long as such a design rests in intention only it is not indictable. 37 C. 467 : 14 C. W. N. 1114 : 10 C. L. J. 453 : 7 I. C. 359.

—although to establish the charge of conspiracy there must be agreement there need not be proof of direct meeting or combination, nor need the parties be brought into each other's presence : the agreement may be inferred from circumstances raising a presumption of a common concerted plan to carry out the unlawful design. *above case.*

—where several persons are charged with the same conspiracy it is a legal impossibility that some should be found guilty of one conspiracy and some of the other. Association for music, gymnastic exercises and lathi play amongst young men living in the same village or attending the same school are ordinary incidents of village or school life and could hardly with propriety be proved as forming elements in any alleged scheme of conspiracy to wage

S. 10. (Things said or done by conspirator)—*contd.*

war against the King-Emperor and all the more so, when they are shown to have been accompanied by a complete absence of secrecy and rather by a courting of publicity. 38 C. 559; 15 C. W. N. 593.

—where the accused is charged with an offence of conspiracy and acts of cheating in presence of conspiracy, the charge is not bad and it is open to the prosecution to prove such acts in order that from these the existence of the conspiracy may be proved. 35 C. L. J. 279, 25 M. 61 Dist

—the criminality of the conspiracy is distinct from and independent of the criminality of the overt acts. When persons have been taken into custody and are in a condition which makes it impossible for them to act in aid or in furtherance of the conspiracy, the acts of persons who were members of the conspiracy and who are still free to act in presence thereof, are not admissible as against them; these acts can no longer be deemed as the acts of co-conspirators. 15 C. L. J. 517.

—when no conspiracy was proved the self-incriminating statement of one was not admissible against the other accused. 18 C. L. J. 590; 14 Cr. L. J. 586; 21 Ind. C. 378.

—the object of this sec. is to ensure that one person shall not be made liable for the acts of another until some bond in the nature of agency has been established between them and the acts of another which it is proposed to attribute vicariously to the person charged must be in furtherance of the common design and after such design was entertained 1929 Pat. 145; 116 I. C. 756; 30 Cr. L. J. 646, F. B.

—this sec. is intended to make evidence communication between different conspirators while the conspiracy is going on, with reference to the carrying out of the conspiracy. 38 C. 169; 15 C. W. N. 25; 11 Cr. L. J. 710; 8 Ind. C. 770.

—when two persons conspire together to commit an offence each is regarded as being the agent of another and just as the principal is liable for the acts of the agent so each conspirator is liable for the acts of his fellow-conspirator done in furtherance of the common intention. 31 Bom. L. R. 515.

—a letter of a person cannot be admissible in evidence without proving that he is a party to the conspiracy. 25 Bom. L. R. 248.

—where there is reasonable ground to believe that two or more persons have conspired together to commit an offence, anything said, done or written by any one of such persons in reference to their common intention may be proved both for the purpose of proving the existence of the conspiracy as also for showing that any such person was a party to it. 28 C. 797.

—a conspiracy within this sec. contemplates something more than the joint act of two or more persons to commit an offence. 4 C. W. N. 528, 25 B. 230.

—what has to be established under this sec. to make a document, found in the possession of one of several persons accused of conspiracy, admissible against the other accused, is that there is

S. 10.. (Things said or done by conspirator) -*contd.*

reasonable ground to believe in the existence of conspiracy amongst such persons. It is not necessary for this purpose to establish by independent evidence that they are conspirators. 16 C. W. N. 1105; 16 Ind. C. 257.

—where a letter written by a stranger to a conspirator is not shown to have been received or replied to or otherwise acted upon by the latter it is not sufficient to establish the former's connection with the conspiracy so as to make his acts done in pursuance of the conspiracy, *abovē case*

—overt acts may properly be looked at as evidence of the existence of a concerted intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be detected. But the criminality of the conspiracy is independent of the criminality of the overt act *abovē case*.

—statement of accused after arrest and not amounting to a confession is not admissible against a co-accused either under s. 10 or s. 30 but only against himself 46 C. 700 30 C. L. J. 255 (38 C. 169, 15 C. L. J. 517) *fol.*

—where more than two persons are charged with conspiracy it does not follow that either all the conspirators must be convicted or they must all be acquitted. 14 C. W. N. 1114, *similar case* 41, C. 754.

—but where three persons were charged of criminal conspiracy and two were acquitted, it was held that the third also must be acquitted. 30 C. W. N. 94; 91 I. C. 883, 1926 Cal. 345.

but the proof of a conspiracy depends upon - of -

83 I. C. 513.

—there is a considerable inconsistency between the provisions of s. 10 and the illustrations attached thereto. 11 P. W. R. 1915 Cr. 37 C. 507, 28 C. 797.

S. 11. (When facts not otherwise relevant become relevant.)

—this sec. is controlled by s. 32 where the evidence consists of the statements of persons who are dead 110 I. C. 521; 1928 Cal. 893.

—the words of the sec. are very wide. 16 B. 414

—this sec. must be read subject to the other ss. of this Act: so, if the tenor of a disposition made by a person since deceased does not fall within the terms of s. 11 the provisions of s. 11 34 A. 341, *followed*

—a habitual cheat, the fact that he belongs to an organisation formed for the purpose of habitually cheating in concert, is relevant under this sec., 37 C. 91:

S. 11. (When facts not otherwise relevant become relevant)
—contd.

14 C. W. N. 49, and it is open to the prosecution to prove against each person that the members of the gang are cheat. *above case.*

—all previous statements made by the accused having bearing on the question of his guilt are admissible. 4 Pat. L. T. 381: 73 I. C. 963.

—'facts' do not include judgment, so a judgment in which one of the parties was not a party in the previous suit and which is not admissible under sec. 40 and 43 Evi. Act, cannot be admissible under this sec. 6 C. 171 F. B. (11 C. 562, 12 C. 207, 13 C. 352, F. B., 11 M. 116, 12 A. 1 F. B.) *Fol.*, (12 M. 9, 10 A. 585, 15 M. 19, 18 M. 73, 23 C. 623) *Dist.*

—former judgment in which one of the parties was not party may under certain circumstances go in evidence. 22 C. 533 P. C., 25 A. 546, 9 C. W. N. 402, 12 C. W. N. 739, 35 C. 701: 12 C. W. N. 657: 7 C. L. J. 563, 4 C. 633, P. C., 50 C. 370: 37 C. L. J. 233.

—judgment not *inter partes* is admissible under s. 11 and 13 of the Evi. Act, to prove the motive of a transaction alleged to be benami. 1929 Pat. 739: 8 Pat. 783.

—though the recitals in a judgment cannot be used as evidence, still the judgment is evidence as a relevant fact or as transaction. Evidence of custom in the connected families may be evidence of custom in the family in question. 53 C. 370: 37 C. L. J. 233. 1923 Cal. 485, 29 C. 343 *Ref.*

—judgment of prior forfeiture proceeding is admissible in subsequent case under s. 153 A, I P. C. 104: 1 C. 225. 1927 All 654: 28 Cr. L. J. 785: 25 A. L. J. 846.

—'highly probable' points out that the connection between the facts in issue and the connected facts sought to be proved must be so mediate as to render the co-existence of the two facts highly probable. 6 C. 665, 25 C. 210: 2 C. W. N. 91, 47 C. 671 F. B.

—documents not *inter partes* containing boundaries of other lands are not admissible. 25 C. W. N. 1022: 63 I. C. 954, 14 C. L. J. 457: 19 C. W. N. 468, 68 I. C. 314, 329, 1943 Nag. 22, 35 C. L. J. 19, 28 C. W. N. 1092, 29 C. W. N. 469: 86 I. C. 674: 1925 Cal. 684, 41 C. L. J. 374: 86 I. C. 734: 1925 Cal. 1034, 84 I. C. 420: 1924 Cal. 1067, 45 C. L. J. 55: 30 C. W. N. 761: 97 I. C. 265: 1926 Cal. 948, 105 I. C. 61 (C), 45 C. L. J. 138: 101 I. C. 542, 44 C. L. J. 582: 99 I. C. 907, 1927 Cal. 230, 91 I. C. 688: 1926 Cal. 479, 1927 Cal. 918, 29 Punj. L. R. 74, 109 I. C. 728: 1928 Lah. 428, 1927 Lah. 448, but they are admissible when the parties to those documents are examined in the case. 33 C. W. N. 1085.

—in the case of a dispute as to the right to the possession of a particular piece of land, documents relating to lands on the boundaries of the land in dispute—
the persons who were in
admissible in evidence. 91
27 Lah. 448, 101 I. C. 42:
when the parties to those
documents are examined. 33 C. W. N. 1085.

S. 11. (When facts not otherwise relevant become relevant)
—contd.

—recitals of boundaries in a sale certificate relating to adjoining lands are not admissible to prove the facts stated therein. 110 I. C. 521 : 1928 Cal. 893.

—document not *inter partes* containing recital that particular land belongs to a particular *howla*, is admissible in evidence. 5 C. L. J. 53, *contra* 10 C. W. N. 468, which holds that 5 C. L. J. 55 is only an *obiter*, but see 23 C. L. J. 578.

—but such documents may be admissible in evidence under s. 32 (3) Evi. Act. 1923 Cal. 299, 1928 Lah. 428 : 10 Lah. L. J. 370 : 109 I. C. 728. See cases under s. 32 Evi. Act.

—a document which is not admissible in evidence on account of its being barred under s. 49 Registration Act, is admissible in evidence under s. 11 Evi. Act, if it is inconsistent with the fact in issue. 1930 All. 130 : 122 I. C. 895

—*exparte* decree of rent proves the existence of the tenancy at the time. 1923 Cal. 270 : 67 I. C. 787, 3 Pat. L. T. 570 : 1922 P. 557 : 65 I. C. 856.

—entries in Batwara papers, admissibility of 1926 Cal. 115.

—a comparison of thumb impression is admissible under this sec. 1 C. W. N. 33.

—a mortgage executed by the son in which the father is described as dead is admissible when death of the father is in question. 1923 Cal. 378 : 72 I. C. 985.

—when a document is admitted in evidence recitals therein are not evidence especially if they are merely assertions by a person who is alive and who might have been brought before the court as a witness. 1923 Cal. 290 : 68 I. C. 282

—the fact that a deceased, after an alleged *nika* marriage, has executed a will in which her name was not mentioned is a relevant fact to disprove the marriage 7 C. W. N. 665 : 27 B. 485 P. C.

—neither under s. 11 nor under s. 145 Evi. Act is the prior deposition of a third party admissible to contradict the evidence or impeach the credit of a witness in the case. 34 M. L. T. 355 : 78 I. C. 176 : 1924 Mad. 537.

—in a suit for rent, a statement contained in an order for delivery of possession as to the rent payable is not admissible in evidence. 87 I. C. 512 (c).

—self serving statements are admissible where they make relevant fact highly probable or improbable or where they are *res gestæ*. 1925 Pat. 68.

—mental feelings of a person who is dead expressed in a will are highly relevant to the question of his religion and such statements are admissible both under s. 11 (2) and s. 21 (2) of the Evi. Act. 1930 Rang. 42 : 121 I. C. 796 : 7 Rang. 720.

S. 12. (Facts tending to determine amount of damages are relevant).

—a party cannot be allowed compensation for losses which might have been reasonably avoided. 47 C. 1027; 33 C. L. J. 72; 61 I. C. 14.

—measure of damages in anticipatory breach of contract. 32 C. L. J. 168

—a measure of damages for breach of contract to deliver goods within a specific time when the vendor gives previous notice to the purchaser of his inability to perform the contract. 30 C. 477.

S. 13. (Facts relevant when right or custom is in question).

—"right" in s. 13 only applies to incorporeal rights both private and public, and the word transaction does not include a judgment. 6 C. 171, F. B., 8 C. 483 F. B., 10 B. 439, *Fol. Contra*, 15 C. 233; 12 A. 1, F. B.

—the meaning of the word 'right,' must be the same in both the clauses. 12 A. 1 p. 14 F. B.

—the words of the sec. are very wide giving a wide interpretation to the sec., the mere assertion of the right is sufficient assertion of a right in prior suit need not be successful. 1926 Cal. 727; 52 I. C. 104.

—the words 'where the question is as to the existence of any right or custom' limit the section. 31 B. 143

—former judgment in which one of the parties was not a party, r . . . in evidence 22 C. 533, P. C. 2 . . . 02, 12 C. W. N. 749, 35 C. 701. 12 . . . P. C. 28 C. 142, 7 C. L. J. 90, 9

—judgments not *inter partes* are admissible under s. 13. 1923 Cal. 194, 13 B. 143, 114 I. C. 616, 1929 Nag. 88, 1930 Pat. 231, but not the findings 65 I. C. 525, 88 I. C. 699, 28 C. W. N. 942, 82 I. C. 99.

—finding of facts arrived at on the evidence in one case cannot be the evidence of that fact in another case where parties are not the same. 33 C. W. N. 463; 27 A. L. J. 246; 1929 P. C. 99; 56 A. 119; 56 C. 1003; 49 C. L. J. 327; 31 Bom. L. R. 734; 114 I. C. 561 P. C.

—a judgment not in *rem* nor relating to public matter nor between the parties is relevant for the purpose of decision of the same point in a subsequent suit. 1930 Nag. 1; 26 N. L. R. 33; 121 I. C. 641 F. B. (1929 P. C. 99, 1 Lab. 510) *Rel on*, 22 C. 533 P. C. *Dist.*, 1926 Nag. 139 *Overruled*. (29 C. 187 P. C. 35 C. 701, 1921 Mad. 248) *Ref.*

—judgment not *inter partes* is relevant as showing transaction inconsistent with the right claimed, 1 C. W. N. 265; 19 A. 277; 24 I. A. 10 P. C. or for corroboration of a fact asserted by the party in oral evidence. 1929 Pat. 749.

S. 13. (Facts relevant when right or custom is in question)
—*confd.*

—a judgment not *inter partes* but which relates to the subject-matter of the suit and evidences the assertion of right in controversy is admissible. 64 I. C. 465, 63 I. C. 699 (C) 1922 Oudh. 98 : 65 I. C. 338, 88 I. C. 699, as evidence of title. 89 I. C. 663.

—judgments not *inter partes* in which an adoption was upheld constitute relevant pieces of evidence. 114 I. C. 616.

—documents not *inter partes* are admissible under s. 13. 30 C. W. N. 826 43 C. L. J. 327 : 1926 Cal. 822 : 95 I. C. 334.

—old judgments containing the pleadings under the rules then prevailing is admissible as admissions of parties. 3 C. L. J. 521, 9 C. 556 *fol.*

—rent-decree obtained by a co-sharer landlord is admissible to prove rate of rent. 1928 Cal. 355 : 112 I. C. 785, 22 C. W. N. 304 22 C. 533 P. C. 1928 Cal. 355 *contra*. 1928 Cal. 353 112, I. C. 787, (25 C. 522 F. B., 1923 P. C. 1) *fol.* and 22 C. W. N. 304 *not fol.* 22 C. 533 P. C. *Dist.*

—in a suit for possession previous judgment in a proceeding under s. 145 Cr. P. C., is admissible in evidence to prove possession. 40 C. L. J. 30.

—a document executed by a stranger in favour of the plaintiff's ancestor admitting his right, is admissible as evidence of title. 1 Pat. 275 : 1922 P. 488. 3 Pat. L. T. 792

—a document under which a person derives title can be used in evidence where a question of title is raised with reference to land included in it or outside it as the case may be. 101 I. C. 792 : 1927 Cal. 576

—a *kahala* which recites that a holding was a dwelling house is admissible in evidence under this sec. although the document is not *inter partes*. 55 C. 355 : 32 C. W. N. 184 : 1928 Cal. 315 : 107 I. C. 81.

—a will reciting the permanent nature of a tenancy is admissible when the will relates to the nature of the tenancy. 56 C. 275 : 1929 Cal. 473 : 118 I. C. 353.

—a report containing signatures of revenue officers and residents of the village are admissible under this sec. where the right as *Mohunt* was asserted. 1930 A. L. J. 964.

—to prove or disprove a custom or right the transaction by which right or custom is asserted or denied, is relevant but not the transaction in which or *in the course* of which such custom is asserted or denied. The right or custom must be asserted by the transaction itself. 11 C. W. N. 703

—custom is a rule which, in particular family or a particular district has, from a long usage, obtained the force of law. 26 W. R. 55 : 3 I. A. 259, P. C.

—the legal title of custom to recognition depends on their antiquity and certainty 14 M. L. A. 570, P. C.

—where a custom is in dispute the scope of its inquiry need not be confined to the particular locality in which the person alleging the custom resides. 27 C. 379, 23 C. 427.

S. 13. (Facts relevant when right or custom is in question)—*contd.*

—a family custom on a derogation of ordinary law cannot be supported on a slender foundation. 24 A. 263 P. C., 12 M. I. A. 81, 242, P. C.

—the transactions referred to in clause (a), are transactions by which a right or custom was created, claimed, recognised, asserted or denied. 11 C. W. N. 703.

—a suit in which the question of the validity of an orphan's adoption is in question a statement made in a prior litigation is admissible to prove an instance of an orphan's adoption. 1929 All. 561 : 118 I. C. 154.

—a benami document being a fictitious transaction is not admissible in evidence as a "transaction" under this sec. 31 C. W. N. 32 : 99 I. C. 189 : 1927 Cal. 1.

—previous transaction in respect of different property is not "transaction" within the section. 29 C. W. N. 469 : 1925 Cal. 684 : 86 I. C. 674, 11 C. W. N. 703 *Fol.*

—the word "claims" denotes a demand or assertion in relation to a thing or attribute as against or from some person or persons showing the existence of a right to it in the claimant. A bare statement may or may not be a claim according to the attending circumstance in which it is made. 29 C. W. N. 469 : 86 I. C. 674, 1925 Cal. 684.

—in a dispute regarding the nature of the land recitals in sale deeds made by vendors in favour of one party to the suit showing nature of the same land is admissible in evidence. 1930 All. 299 : 1930 A. L. J. 564, 11 A. L. J. 139 *Rel on.* (23 B. 63, 16 C. W. N. 252 17 C. W. N. 108 : 1924 Cal. 1067, 45 C. 159, 1922 Cal. 252), *Ref.*

—a map prepared by an officer of Govt. while he was in charge of a Khasmahal, the Govt. being in possession as private proprietor, is relevant under this sec. as evidence of possession or assertion of a right. 5 C. 287.

—chittas prepared by Govt. for its own private use in connection with resumption proceedings are not admissible against private persons for the purpose of proving that the lands described therein are or are not of a particular character or tenure. 1927 Cal. 189 : 98 I. C. 85.

—Batwara Khasras made in the presence of the proprietors are evidence against them under both ss. 13 and 18 Evi. Act. 1929 Pat. 32 : 114 I. C. 479 : 10 Pat. L. T. 399.

—statement contained in a habansma executed by the deceased grandfather of the tenant to prove whether the rent is *nakdi* or *bhowil* is not admissible. 11 C. W. N. 703.

—the assertion of title by the mortgagor in a mortgage deed is admissible in evidence under this sec. and when he is dead it is also admissible under s. 32 Cl. (7). 1921 M. W. N. 560 : 14 L. W. 327, 70 I. C. 389.

—a discharged mortgage bond is admissible to prove rate of rent. 112 I. C. 787 : 1928 Cal. 703.

S. 14 (Facts showing existence of state of mind &c.)

—this sec. applies to cases where a particular act is more or less criminal or culpable according to the state of feeling or mind of the accused and it cannot be extended to cases where the question of guilt or innocence depends upon actual facts. 6 C 659.

—in a case under s. 106 I. P. C. other fraudulent transfers on the same day and apparently with the same intention may be proved. 16 B 414.

—where certain speeches form the subject matter of a charge for sedition and when such speeches form part of series of speeches or lectures on one topic, any of such speeches is admissible under this section. 32 M. 3.

—where a particular transaction is one of a series of similar frauds, evidence of other frauds is admissible under this section. 9 C. L. J. 610

—but where a person is charged of one offence, evidence of guilt of another offence cannot be given except to prove the elements mentioned in this s. 18 C. L. J. 578. 47 C 671 F. B.

—where an accused person is charged with belonging to a gang of persons associated for the purpose of habitually committing dacoity under s. 400 I. P. C. evidence showing that he has been previously convicted of a charge of theft has been ordered to be given under this s. 46 B.

—facts showing the existence of a state of mind relevant only if they establish that such states of mind existed in reference to the particular matter in issue. 36 C. 573. 47 C. 671 : 24 C. W. N. 501 : 31 C. L. J. 402 F. B.

—where the state of mind is relevant to the issue or a relevant fact of actual facts 1928 L.A.N. 334, (6 C. 653). 44 C. 504. 24 C. 671 F. B. 12 P. R. 1913) Rel. on.

—in a trial under s. 235 and s. 243 I. P. C. evidence of the possession of counterfeit coin and instruments for their manufacture is admissible. 61 I. C. 617.

—rashness can be proved with reference to the particular occurrence alone and the prosecution is not entitled to prove that the accused was rash generally or in relation to another occurrence. 1929 M. W. N. 395.

—former judgment more than 25 years old and convicting accused of dacoity is admissible in a case under s. 401 I. P. C. for proof of habit committing

under s. 409 I. P. C. for the
of collateral offences in

S. 14. (Facts showing Existence of state of mind &c.)—contd.
 respect of other sums was not admissible. 1928 Lab. 382: 30 Cr. L. J. 18: 112 I. C. 850.

—a writing made sometime after the committing of an offence under s. 124 I. P. C. is admissible in evidence under this sec. 1928 Bom. 78: 108 I. C. 30: 30 Bom. L. R. 315: 29 Cr. L. J. 320. 10 Bom. L. R. 848 *Ref.*

S. 15. (Facts bearing on question whether act was accidental or intentional)

rule laid down in shows that it is one transaction, similar occurrences. 2 F. B.

—in construing a newspaper article the meaning must be taken from the article as a whole and

—an open user continued time raises the presumption the 1936 Lab. 522.

S. 16. (Existence of course of business when relevant).

—a court cannot take as matters of public notoriety time of train between two places on a particular day, the number of mail trains within a given time and other like facts involved in such an enquiry. 20 C. L. J. 455.

—in a suit by a firm against another for the recovery of the balance of an account between them, it was held that it was reasonable to presume that the ordinary course was pursued in this case. 6 M. I. A. 80, 90 P. C.

Ss. 17-21. (Admission, admissibility of)

—"admission" is usually applied to a civil transaction and to those matters in criminal cases which involve no criminal intent, while "confession" is usually used in criminal court denoting an acknowledgement of guilt. An admission in a civil court that a document is genuine cannot be regarded as a confession in forgery case. 1929 Cal. 539: 1929 Cr. C. 194, 37 C. 467 *Ref.*

—the deposition of a witness in a former suit is admissible as an admission in a subsequent suit in which such witness is a deft. 36 C. L. J. 186. 4 U. P. L. R. 19: 65 I. C. 345.

—admission in the pleadings of the deft. in a previous suit

was untrue. 1922 Neg. 67: 65 I. U. 300.

—a party may show that admission were mistaken or true. 5 C. L. J. 115, 11 C. W. N. 321: 4 C. L. J. 102: 29 A. 184, P. C. but very clear proof is necessary to escape. 18 W. R. 280.

—unless the admissions are rebutted the facts admitted must be taken to be established. 116 I. C. 903: 1929 Lab. 318: 20 Lab. 694, 29 A. 184 P. C. *fol.*

Ss. 17-21. (Admission, admissibility of)--contd.

—the burden of proof rests heavily upon the party and after him upon his heirs to show that the admissions made in a court of law were untrue. 53 B. 321 1929 Bom 147 : 116 I. C. 236 : 31 Bom L. R. 109.

—admissions are of no value once they are proved untrue. 49 A. 707 : 1927 All 385 : 100 I. C. 1037 : 25 A. L. J. 572

—an admission on a pure question of law is not binding upon the party. 1928 Lah 779

—an admission cannot be used against a party unless it is put to him and opportunity be offered to him to explain it. 1930 Lah. 714 : 12 Lah. L. J. 149 : 31 Punj L. R. 472, 31 Punj L. R. 243 *Rel on.*

—under s 21 a court is bound to receive the admission of a party in evidence but this rule does not apply to deoals of a party. 49 A 482 1927 All 383 28 Cr. L. J. 323 : 100 I. C. 707 : 25 A. L. J. 327.

—recital in a will cannot be proved by the persons who made it or his representative in interest 26 C. W. N. 273 : 15 L. W. 404 : 100 I. C. 835 : 1927 P. C. 102

—statement of an accused to police officer is admissible as admission against the accused under ss. 17 and 18 but it is not admissible in his favour. 44 C. L. J. 253 : 1927 Cal. 17 : 54 C. 237 : 28 Cr. L. J. 99

—the statement that a document is a copy of the original is

W. N. 165

—the admission made by a deft. in a former proceeding cannot be used against a co deft, unless it was made by him in his character of a person jointly interested with the co-deft. The requirement of the identity in legal interest between the joint owners is of a fundamental importance 30 C. W. N. 254 : 1926 Cal. 705 : 93 I. C. 115

—an admission by one of the defendants that the suit lands are ancestral is not binding on others when they are not represented by him and has independent rights of their own. 1930 Lah 238. 122 I. C. 109.

—the requirement of the identity in legal interest is of fundamental importance, to make the admission of the co-defendant admissible. 30 C. W. N. 254 : 93 I. C. 115. 1926 Cal. 705.

—admission of one party may be given in evidence against another when they have joint interest 25 C. W. N. 89. 61 I. C. 514.

—an admission or even a confession of judgment by some of the defts. is no evidence against his co-deft. 1928 Lah. 769 : 29 Punj.

Ss. 17-21. (Admission, admissibility)—contd.

L. R. 715 : 115 I. C. 425 : 10 Lab. L. J. 339, 23 W. R. 214 P. C. fol., 1929 Lab. 721 : 11 Lab. L. J. 404, (2 I. A. 113, 6 A. 395, 45 C. 159) *Ref.* (1933 Lab. 123, 44 C. 130) *Dist.*

—admission must be taken as a whole or not at all and in taking the admission as a whole if any portion is found to be in favour of the person making the admission it will operate in his favour. 41 M. L. J. 525 : 1921 M. W. N. 639, 2 Pat. L. T. 658.

—the admission must be read as it stands, one part cannot be taken rejecting the other. 49 A. 707 : 100 I. C. 1037 : 1927 All. 385 25 A. L. J. 572.

—an admission to the effect that an appeal was understamped is not binding it being an admission of a point of law. 1929 Lab. 879.

—an admission of a reversioner is evidence against another person claiming reversionary interest under the former. 64 I. C. 334 (C).

—but the statement of one reversioner is not ordinarily admissible against another. 63 I. C. 566.

—admission of father does not bind the son. 24 I. C. 311, P. C., nor of the brother does. 25 C. W. N. 89 P. C.

—statement of oneself made in a previous suit when there was no controversy about the relationship is admissible 12 C. W. N. 266.

—before the statement of an agent can be relevant, the fact of agency must be proved. 3 B. L. R. 273.

—if the agent is authorised to write a letter, it matters not whether he signs the name of the principal or his own. 6 C. 340.

—principal can repudiate agent's act. 31 C. 357, but not always. 6 C. W. N. 57 P. C.

—evidence of one's agent in the absence of principal's deposition is legal. 15 W. R. 157.

—principal is not bound by the bye-transaction of the agent, 6 W. R. 57, P. C.

—an agent's admission of acting in that capacity is admissible. 2 W. R. 190.

—one partner is the agent of the other. 11 C. 588.

—receiver is not an agent. 10 C. W. N. 959.

—where a party to a proceeding admits the facts

I. C. 31 : 1927 All. 659.

—the personal conduct or admission of one of the trustees of a institution cannot be allowed to prejudice the cause of the institution. 1930 Lab. 579 : 31 Punj. L. R. 509, 1927 P. C. 230 P. C. *Dist.*

—a general statement by a witness that a number of persons admitted having committed crime, is valueless without some indication as to which of the persons made the commission in question with some particulars of what was actually said. 7 Lab. L. J. 239 : 26 P. L. R. 601 : 1925 Lab. 418.

—every admission which a party makes is evidence against

Ss. 17-21. (Admission, admissibility &c.)—contd.

him and may properly be acted upon without necessarily accepting other statements or admissions which he has made. 90 I. C. 487.

—where one of several defts. took part in *batwara* proceedings and thereon a map was prepared and certain measurements were made which supported the plff's. title, held they were admissible in evidence though not binding as admission on the defts. who claimed under an independent title. 90 I. C. 643.

—client is bound by the admission of his pleader. 6 C. W. N. 82, 21 M. 274, 25 M. 36, 5 C. W. N. 353, 13 A. 272 F. B., 13 C. 115, 27 C. 428, 7 C. W. N. 351.

—an erroneous admission of a pleader on a point of law cannot bind his client. 3 C. W. N. 222; 26 C. 250, 28 B. 468, 24 B. 369, 9 C. W. N. 636; 33 C. 257, 6 C. W. N. 82, 31 M. 274, nor the erroneous omission to object to the reception of evidence makes it admissible. 34 C. L. J. 107.

—it is not open to a party in appeal to try to go behind the admission of the pleader who represented him in the Lower Court, by the statement of his counsel engaged in appeal. 102 I. C. 283, 1927 Lah. 748, 9 W. R. 465, 11 M. I. A. 253, 21 M. 279, 22 M. 538, 6 C. W. N. 52.

—entries in solicitor's books of account as to the object of the purchase for client are neither inadmissible nor irrelevant nor hearsay. 33 C. W. N. 493; 27 A. L. J. 406; 49 C. L. J. 335; 57 M. L. J. 581; 1929 M. W. N. 422, 114 I. C. 565, P. C.

—counsel possesses general authority to make a binding compromise. 27 C. 428, 13 A. 272 F. B., *contra*, 6 C. W. N. 82, 24 M. 274.

—admission of one insolvent cannot furnish evidence against the other. 34 C. L. J. 107; 49 C. 93, 1922 C. 267.

—acknowledgment of a debt cannot bind the minor and
13 C. L. R. 112, 22 C. 545, 13

estate, except by a docu-

ward by personal conveyant.

—acknowledgment of liability of the mortgagor binds the
W. N. 868, so
Pat. 766, 1929

of a mortgage
47 C. L. J. 222;
L. R. 296 P. C.

—an erroneous omission to object to the reception of evidence of an admission by party irrelevant within sec. 21, does not make it relevant. 19 A. 76 P. C.

—objection not taken before the lower court, cannot be taken before the High Court. 12 C. W. N. 345; 7 C. L. J. 250; 10 Bom. L. R. 126 P. C.

S. 23. (Admission in Civil cases when relevant.)

—entries in road-cess return is evidence as admission. 30 C. 1033 : 8 C. W. N. 1, 3 C. W. N. 343.

—when a party has altered a deed he cannot fall back upon it. 10 C. W. N. 788 : 33 C. 812 : 3 A. L. J. 363.

—admission to a person to whom the parties went for compromise are admissible in evidence unless there was an express agreement that no evidence of those statements would be given. 95 I. C. 363 : 1926 Lah. 548.

—the evidence as to negotiations of compromise and the statements made during such negotiations are generally without prejudice. It is generally against public policy to admit such evidences and statements. 11 C. W. N. 26 (note).

—where there was admittedly no express condition that evidence of the interviews should not be given and it could not be inferred from the circumstances that the parties had so agreed the evidence could not be excluded under this sec. 44 C. 130 : 20 C. W. N. 1217 : 34 I. C. 571.

—this section precludes the Court from making use of admissions contained in the petition of compromise. 83 P. R. 1877.

—the admission before an arbitration is admissible although it is for the court dealing with the facts to attach whatever weight it thinks proper. 52 I. C. 348 : 4 Pat. L. J. 676.

S. 24. (Confessions caused by inducement, threat or promise when irrelevant.)

S. 25. (Confession to Police officer not to be proved.)

S. 26. (Confession by accused while in custody of police not admissible.)

S. 27. (How much of information received from the accused may be proved.)

S. 28. (Confession made after removal of impression caused by threat etc.)

S. 29. (Confession otherwise relevant not irrelevant because of promise of secrecy etc.)

S. 30. (Confession of co-accused.)

—confession is an admission made by a person charged with a crime stating or suggesting the inference that he committed the crime. 1930 A. 29 : 31 Cr. L. J. 26 : 120 I. C. 257 : 1930 Cr. C. 45.

—when a confession is given in evidence the whole of it must be given, but the court is not bound to accept the circumstances alleged by the accused to extenuation, however improbable they may be. 1930 M. W. N. 785.

—where the accused does not understand the language in which questions are put but in answer nods his head it does not amount to confession. 31 Punj. L. R. 391 : 1930 Lah. 84 : 1930 Cr. C. 100 : 120 I. C. 539.

—a M. may record a confession on Sunday or any other

S. 30. (Confession of co-accused)—contd.

holiday and at a place other than the court-house 1930 Lah 171 : 11 Lah. L. J. 461 . 1930 Cr. C. 179.

—in determining a case from the point of view of sec. 24 Evi. Act, the court will have to perform a threefold function. (1) It will have to determine the sufficiency of the inducement, threat or promise as affording certain grounds. (2) It will have to clothe itself with the mentality of the accused to see whether grounds would appear to the prisoners reasonable for a supposition that is mentioned in the sec. (3) It will have to judge as a court if the confession appears to have been caused in consequence of the inducement, threat or promise. -The sec. does not require positive "proof," as defined by s. 3. of the improper inducement to justify the rejection of the confession and the word "appear" indicates a lesser degree of probability that would be necessary if proof would be required. 52 O. 67 : 29 C. W. N. 300 [36 I. C. 414 : 26 Cr. L. J. 782

—the accused, in making a confession before a Magistrate admitted that he had been told to tell the truth by the *Sahib* who told him to tell the truth and he would be released, held that the confession so made was bad under s. 24 Evi. Act, 45 B. 1086, 32 C. L. J. 204.

—proving of admissions before the police officer vitiates the conviction. 26 O. W. N. 48 (note.)

—if *prima facie* a confession is false inconsistent or absurd that might suggest it is not voluntary. 1930 Nag. 259 . 31 Cr. L. J. 661 : 124 I. C. 459.

—the evidence of police officer with regard to statements made to him by certain person is inadmissible. But statements made to the investigating police officer by a relative of a person whose property was stolen, can be used to contradict or corroborate as the case may be, the statement made by him in the court of the trying Magistrate. 34 C. L. J. 53.

—where the case rests entirely on the confession of the accused and there is conflict as to the manner in which it was obtained the accused is justified in asking the court to give him benefit of doubt. 1930 Lah. 88 . 1930 Cr. C. 104.

—a merely moral exhortation to tell the truth is in no way objectionable. 4 Pat. 616 . 89 I. C. 961 : 1925 Pat. 772.

—in the absence of evidence to show affirmatively that any portion of the exculpatory statement in the confession is false, the court must accept or reject whole confession and cannot accept the inculpatory portion rejecting the exculpatory element as inherently incredible. 1931 Cr. C. 1, 1930 A. L. J. 1481 F. B.

—statement by accused during police inquiry regarding property, possessed by him, if exculpatory but involving an admission on incriminating circumstance, is inadmissible under s. 25. 46 B. 961, 22 Bom. L. R. 1247 : 59 I. C. 324

—if and when certain facts are deposed to as discovered in consequence of information received from the accused in custody of the police so much of the information as relates distinctly to the fact or facts discovered thereby becomes evidence. Facts already known

S. 30. (Confession of co-accused)—*confd.*

to persons other than police officer may be said to be so discovered. 25 C. W. N. 788, 14 L. W. 418.

—a confession to jail warder is of no evidentiary value. 1930 M. W. N. 1249.

—in case of retracted confession independent corroboration of the confession is required in order that the court may be satisfied that the confession is true. 1930 Cal. 141: 50 C. L. J. 518: 1930 Cr. C. 141, it may be corroborated by the production of articles for which the accused can give no explanation. 30 Punj. L. R. 646: 119 I. C. 325: 30 Cr. L. J. 1046: 1930 Lab. 257: 1930 Cr. C. 289.

—but there is no law preventing a court from convicting a person upon his confession which is subsequently retracted provided the court is satisfied that the statement is voluntary and true. 1930 All. 29: 120 I. C. 257: 31 Cr. L. J. 26: 1930 Cr. C. 45, 1930 Cr. C. 104: 1930 Lab. 88, 53 M. 160: 1929 Cr. C. 485: 1929. Mad. 837: 1929 M. W. N. 901, 57 C. 488.

—in deciding whether the person to whom the confession was made was a person in authority the test is whether he had any concern or interest in the matter which would give him that authority. 57 C. 488.

—when confession was made to a zeminder of a village who was also the Magistrate and was regarded as an important person in the village, the Zeminder must be regarded as a person in authority. 101 I. C. 881: 1927 Pat. 257: 28 Cr. L. J. 497, 8 Pat. L. T. 566.

—where the accused made a statement to the police that the weapon with which the crime was committed was concealed in a prickly pear hush which was excluded by the lower court on the ground that the effect of sec. 162 of the Amended Cr. P. C. was to supersede s. 27, held that if the statement had led to the discovery of the weapon with which the offence was committed, it was not rendered inadmissible by the Amendment. 86 I. C. 664: 1925 Mad 574: 21 L. W. 199

—to reject a confession it is not necessary that there should be positive proof to establish that the confession had been obtained by use of threat, persuasion etc. Anything from the barest suspicion to positive evidence would be sufficient for a confession being discarded. 23 A. L. J. 821: 89 I. C. 903: 1925 All. 627 F. B.

—a statement made by the accused at the dock before the M. and amounting to a confession is admissible in evidence against the accused even if the accused was at the time of making the confession in the custody of the police. 1930 M. W. N. 1249.

—*Ablari* officers are not Police officers for the purpose of sec. 25. 82 I. C. 151: 25 Cr. L. J. 1213: 1925 S. 70 *Contra*, 51. B. 78: 99 I. C. 380: 1927 Bom. 4 F. B.

—excise officer is not a police officer and a confession made to him is not admissible. 54 C. 601, 31 C. W. N. 667: 1927 Cal. 527: 28 Cr. L. J. 579, 102 I. C. 517, 22 C. W. N. 834, 52 C. L. J. 177: 1930 Cal. 710: 1930 Cr. C. 1110.

S. 30. (Confession of co-accused)—*contd.*

—Police Patel in Berar is not included in the term "Police Officer" in s. 25. 101 I. C. 599 : 28 Cr. L. J. 471 : 1927 Nsg. 222.

—merely because a confession by one of the accused is not a complete and detailed confession up in hill, it cannot be rejected against the accused. 1924 All. 511, 75 I. C. 701 : 25 Cr. L. J. 13 : 1924 Nag. 27.

—s. 26 makes no distinction between an oral or written confession but it embodies a substantive rule of law. 1930 Lah. 534 : 1930 Cr. C. 682.

—s. 26 does not make an admission dependent upon the knowledge of the accused as to the identity of the Magistrate. 1930 Lah. 534 : 1930 Cr. C. 682.

—s. 27 is overridden by s. 162 Cr. P. C. 100 I. C. 820 : 1927 Nag. 203 : 28 Cr. L. J. 340.

—this sec. 27 must be strictly interpreted. 34 C. W. N. 106 : 1930 Cr. C. 379 : 1930 Cal. 291.

—so much of the information as leads to the discovery may be proved even if facts discovered lead to an inference of guilt. 34 C. W. N. 106 : 1930 Cal. 291 : 1930 Cr. C. 379, 32 Bom. L. R. 574 : 1930 Bom. 244.

—the fact deposed to as discovered in consequence of information received re confessions made to the police by an accused must be a fact relevant to the case. 105 I. C. 683 : 6 Pat. 611.

—the statement of the accused in a murder case before the investigating officer that he buried the dead body at a particular place pointed out by him is admissible under s. 27. 1930 Lah. 530 : 31 Cr. L. J. 293 : 121 I. C. 728.

—confession in an inquiry under s. 476 Cr. P. C. is confession within sec. 30. 26 Bom. L. R. 614 : 1924 Bom. 445.

—statement of an accused persons under s. 342 Cr. P. C. implicating his co-accused is admissible in evidence. 1930 Bom. 354 : 32 Bom. L. R. 747.

—s. 30 only provides that a court may take into consideration the confession of co-accused. It is not made on oath and its evidentiary value is very low. The statement of even an accomplice has a higher and more probative value. It must be supported by cogent corroborative evidence of the *corpus delicti*. 83 I. C. 889 : 26 Cr. L. J. 185.

—if there is any other relevant matter implicating the co-accused the judge is permitted to consider the self-inculpatory confession along with the said matter and as a result of such consideration to convict the accused. 1930 Nag. 242 : 1930 Cr. C. 818 : 26 N. L. R. 229 F. B.

—confession of co-accused must be taken into consideration and cannot be brushed aside merely as tainted evidence. 1930 Nag. 97 : 1930 Cr. C. 305 : 120 I. C. 721 : 31 Cr. L. J. 153.

S. 30. (Confession of co-accused)—contd.

—the court has discretion to exclude a confession by an accused altogether from consideration against another co-accused. 1930 Cr. C. 818 : 1930 Nag. 242 : 26 N. L. R. 229 F. B.

—a retracted confession is not the testimony of an accomplice within s. 133 Evl. Act. 40 C. L. J. 551.

—a retracted confession cannot be used against the co-accused without substantial corroboration. 101 I. C. 881 : 1927 Pat. 257 : 28 Cr. L. J. 497.

—where the sole evidence against the accused is retracted confession it must be relied on as a whole. 1930 All. 192 : 121 I. C. 550. 31 Cr. L. J. 300 : 1930 Cr. C. 84.

—conviction based on the confession of a co-accused only is bad, 101 I. C. 881 : 1927 Pat. 257 : 28 Cr. L. J. 497.

—but self implication is the guarantee for the truth of accusation against co-accused. 120 I. C. 257 : 31 Cr. L. J. 28 : 1930 Cr. C. 45 : 1930 All. 29

For other cases under ss. 24-30 see rulings under the heading "Confession."

S. 31. (Admission not conclusive proof, but may estop).

—under this sec. admissions are not conclusive evidence of the matters admitted 1929 Pat. 245 : 8 Pat. 776 : 10 Pat. L. T. 191.

—mistake of law as to certain liability should be allowed to be proved. 29 A. 184 : 11 C. W. N. 321 P. C.

—estoppel binds only parties and privies and not stranger. 11 C. W. N. 321 : 29 A. 184 : 5 C. L. J. 115 : 17 M. L. J. 103 P. C.

—an admission cannot bind a third person claiming under an independent title. Where a Hindu father made admission as regards the law applicable it was not binding on the son not claiming through father. 34 C. W. N. 944.

—former statement may be proved to be false. 13 M. L. A. 551 : 15 W. R. 14 P. C., 5 C. L. J. 115, 11 C. W. N. 321 : 4 C. L. J. 192 : 29 A. 184 P. C., 1922 Nag. 67 : 65 I. C. 368, but very clear proof is necessary to escape 18 W. R. 280.

—admission made in execution proceedings must be held to be true if the unsuccessful party proceeds to a suit. 1927 All. 659 : 103 I. C. 34.

—when reliance is placed upon an admission of the witness of opposite party, the whole evidence must be taken into consideration. 60 I. C. 483.

—a pleading by two defs. against the suit of another (plff.) cannot amount to an estoppel as between them. 13 M. L. A. 551 P. C.

—it is difficult to base a conviction on admissions as they are on a somewhat similar footing to a retracted confession. 102 I. C. 492 : 1927 Lah. 549 : 28 Cr. L. J. 556.

Ss 32-33 Statements of persons who cannot be called as witnesses.

S 32.

—statement must be of relevant facts 7 A. 385 F. B.

—a previous statement not made in court can be used only for the limited purpose of corroborating or contradicting a witness and cannot be used as substantive evidence. 1930 Lah. 409 : 1930 Cr C 469, (36 M 191, 25 A L J 994) *fol.*

—when previous statement is used as evidence under ss. 32 and 33 any other statement made by that witness can be used by virtue of sec 153 Evi. Act for the purpose of contradicting that witness 1930 Lah. 409 : 1930 Cr. C. 469, 1926 Lah 122 *fol.*

—the statement is admissible under Cl. (1), only in cases in which the cause of the death of the person who made it, comes in question 10 C 147.

—the first information report against an accused is admissible under cl (1) of the section as to the cause of the informant's death. 44 C. L J 253 1927 Cal 17 : 54 C 237 : 99 I. C. 227 : 28 Cr. L. J. 99, 1930 Lah 450 : 31 Punj L. R. 83 : 123 I C. 120 : 31 Cr L. J. 475.

—where a person though his case was not called as a person filed before his death held to be inadmissible as 145 P. C.

—chowkidar's diary is admissible if it was written by the chowkidar himself or any authorised person. 1922 P. 111 : 67 I. C. 57 : 20 A. L J 601.

—evidence recorded in proceedings under the Fugitive Offenders Act is admissible under ss. 32 and 33 Evi. Act in proceedings under the I. P. C. against the same accused. 1928 Sind 161 : 112 I C. 673 : 29 Cr. L. J. 1089.

—the mode of proving a dying declaration is by examining the person who recorded the statement or to examine some person or persons who were present at the time and heard the statement being made. 50 C. L. J. 584 : 1930 Cal. 228 : 1930 Cr. C. 196.

—the statement must be proved in the ordinary way by a person who heard it made. If the M. be called to prove it, he may refresh his memory with writing made by himself at the time when the statement was made. 8 C. 211 : 10 C. L. R. 11, 6 C. W. N. 321.

—where objection was raised in appeal as to the mode of remand- contents In 8 C.

—witness present may prove dying declaration. 49 C. 358 : 1923 Cal 382.

—the necessity of recording dying declaration arises only when all hopes of life of the man are given up. 52 C. L. J. 525.

S. 32—*contd.*

—in proving dying declaration the witness need not repeat in his own words what the deceased had said and it is sufficient if there is proof of the records of these statements. 1930 Lah. 450 : 1930 Cr. C 554 : 123 I. C. 120 : 31 Cr. L. J. 475 : 31 Punj. L. R. 83.

—the statement of an accomplice just prior to his being
admissible under s. 32.

ration chances to live,
as a dying declaration
157 to corroborate the
testimony of the complainant when examined. 4 Bom. L. R. 434.

—statements made by a deceased long prior to the occurrence resulting in death are not dying declarations. 4 Lah. 451, 59 M. L. J. 876 : 32 L. W. 910.

—statement of a deceased person as to who would be his successor on his death in case of his not having a son is not admissible in evidence. 42 C. L. J. 280 : 93 I. C. 385 : 1926 Cal. I.

—s. 32 (1) unlike the English law is not confined to cases of statements relating to the cause of a person's death but extends "as to the circumstances of the transaction which resulted in death," so a statement made even before the deceased received any actual injuries is admissible. 50 B. 683 : 28 Bom. L. R. 1013 : 27 Cr. L. J. 1140 : 97 I. C. 660 : 1926 Bom. 513.

in the course of
Cr. P. C. and are
and signed by the

before a third class M. is rele-
e fact that the latter is not
164 Cr. P. C. 1930 Lah. 60 :
28.

—a dying declaration stands on a different footing from the testimony of a witness in court. It cannot be accepted in part and rejected as regards the rest. It can be acted upon only if there is

—a dying declaration made at a time when the declarant is in a precarious condition does not cease to be such and become inadmissible merely because the declarant happens to linger for a few

S. 32—*contd*

days more. 1929 Lah. 64; 113 I. C. 177; 30 Cr. L. J. 65; 10 Lsh. L. J. 463

—a dying declaration can be used as evidence even though the accused is not charged with the offence of homicide. 1928 Pat. 162; 6 Pat. 747; 106 I. O. 698; 29 Cr. L. J. 106.

—although the statement made by the deceased to the doctor just before his death is admissible in evidence as dying declaration yet there must be independent corroboration of facts and circumstances to convict an accused of murder. 1929 Pat. 249.

—where there is opportunity for coaching and it is shown that the statement regarding the witnesses to the occurrence was false, the declaration cannot be relied upon. 1930 M. W. N. 1211.

—where a woman was raped and made a statement to her relatives but committed suicide three days after, the rape not being the cause of death, her statement was not admissible in evidence under s. 32 (1). 1930 M. W. N. 702.

—declaration in disparagement of title is admissible. 63 I. C. 685.

—statement against interest is admissible. 1925 All. 130.

—assertion of title in a mortgage deed by the mortgagor is evidence of title. 1921 M. W. N. 569.

—fact of adoption can be proved by evidence

—where a Hindu widow made a statement in a prior suit that she had mortgaged the property for raising a loan to meet the expenses of her husband's *shraddh* ceremony and other necessary expenses and that statement was admitted in evidence under cl. (3) of s. 32 in a suit by the reversioner to recover the property from the possession of the mortgagee who purchased the property in execution of mortgage decree, held that the whole statement should be taken as one and cannot be split up. 94 I. C. 13; 1926 Pat. 255; 5 Pat. 168.

—the principle under which a statement made by a deceased person is regarded as evidence of facts is not applicable to proceedings to obtain custody of the adopted son

who is her own relation i.e. her brother's grandson was not against her pecuniary or proprietary interest and was not admissible under s. 32 (3) because a Hindu widow who after a life-long enjoyment of her husband's property desires at the end to pass it on to her own relations and for the purpose goes through the form of adopting her brother's grandson is bound to allege authority to adopt from her husband. 34 C. W. N. 369; 32 Bom. L. R. 487; 51 C. L. J. 230; 1930 P. C. 79; 1930 A. L. J. 122 P. C.

S. 32—contd.

—a petition of complaint and the examination of the complainant on oath under s. 200 Cr. P. O. are admissible as dying declarations under s. 32 Cl. (1), 36 C. 659.

—the statement admissible in evidence, when made in the absence of the accused, is the oral statement of the deceased, and not the record of it. And such oral statement must be proved by the person who recorded it or heard it made. 36 C. 659, 8 C. 211, 6 C. W. N. 72.

—signs made by a dying man in answer to questions, may be regarded as verbal statement within the meaning of s. 32 26 C. W. N. 414; 49 C. 600, 3 Pat. L. T. 771 7 A. 385 *Fol.*

—'person' does not mean 'persons', 3 C. W. N. 88; 26 C. 236.

—in a suit for dower-debt, a register of marriage kept by a kazi is admissible under this s. 19 C. 689; 19 I. A. 157, P. C.

—statements of a deceased relative, servant or dependent, who had special means of knowledge of a relationship, made at a time when there was no controversy, is relevant to prove the relationship. 27 I. A. 238; 23 A. 37, P. C.; 24 C. 265; 1 C. W. N. 270, 5 C. W. N. 49; 27 I. A. 183; 2 Bom. L. R. 942, 17 C. 849, 9 C. 613, 24 C. 265; 1 C. W. N. 270, 1923 Pat. 266

—statement as to relationship made in a previous suit in which the issue was the same is admissible in evidence. 103 I. C. 26

—*Bhats* are heralds who are interested in keeping family records which are admissible if they come from proper custody. 25 C. 908, 22 A. L. J. 657; 46 A. 665; 1924 A. 575.

—s. 32 cls. 4 or 5, do not admit of hearsay evidence as to whether particular person survived another, or whether a man was living separate or joint, or as to the existence of a custom. 25 A. 143 P. C. 19 A. 1 P. C., 23 A. 37 P. C., 20 C. 758, 24 C. 265.

—personal knowledge and belief of the deponent must be found or presumed in any statement of the deceased person, which is to be admitted in evidence. 7 C. W. N. 209; 25 A. 143 P. C.

d is inadmissible in 3 C. 706.

Law with regard 1928 Pat. 539.

deceased member branch, before any

—where the oral evidence as to relationship is based on pedigree prepared by the deponent's father but the pedigree is not put in evidence nor there is any ground for letting in secondary evidence, the evidence was inadmissible. 91 I. C. 462; 1926 Mad. 475.

—clause (5) is inapplicable to statements made after the dispute had arisen. 25 A. L. J. 861.

—cl. 6 does not require that all the witnesses of the pedigree should have special means of knowledge. 63 I. C. 968.

S. 32—*contd.*

—out of the two confusing pedigrees, the one though brought to light later in point of time, but which was supported by verbal evidence and accepted by competent authorities was accepted in preference to that which was originally produced many years ago and contained the statement that it was all the pedigree that was then known, made by the person who was the person most likely to have knowledge 1925 P. C. 199

—pedigree table if corroborated in material parts by the oral evidence is to be presumed to be genuine 105 I. C. 81.

—where the appellants contended that document relied upon by the respondents, had no claim to be called a family pedigree as it was not within the words of the Privy Council decision in 30 A. 513, "an ancient family record handed down from generation to generation and added to as a member of the family dies or is born," held, a family pedigree as used in s. 32 (b) is not strictly confined to the description of the term in the Privy Council case. In any case such a document is admissible as the declaration of the witness's deceased father who must be taken to have adopted it. 8 N. L. J. 29 : 1925 Nag. 271 : 86 I. C. 847.

—a genealogical table purported to have been made by a
 idence, as it was made with-
 7 C. W. N. 209 P. C. 50 W.
 . C. 13 C. W. N. 1 : 3 C. L. J.

—a recital as to the date of birth in guardianship application is not by itself admissible unless the person making the statement is dead, etc 38 C. L. J. 213

—a statement made by a deceased sister as to the age of brother is admissible in evidence. 25 M. 183, 2 : C. 758, 13 C. 42.

—pedigree may be proved by the statement of kinsfolk, as Hindu boys are taught the names of their paternal and maternal ancestors up to the seventh (or higher) degree as a matter of necessity. 32 C. 84 : 9 C. W. N. 16 P. C.

—a hearsay statement of a deceased as to relationship is inadmissible. 26 C. 581 : 9 C. W. N. 105

—statement of a deceased person is relevant if it is contained in any deed, will or other document which relates to a transaction as is mentioned in s. 13 et. (a). 11 C. W. N. 703.

—though an unproved will is an evidence of title statement contained therein as to the relationship of parties can be relied on. 7 Pat. 733 : 1928 Pat. 459 : 9 Pat. L. T. 484.

—entries in account books are relevant under s. 34 but are not alone sufficient to charge a person with liability without corroboration but if they are written by dead persons they are sufficient evidence under s. 32 (2). 62 I. C. 946.

—the entries in *Jamawasil baki*, *Jamshandi*, *sheha* and *karcha* papers are admissible in evidence without corroboration 1928 C. 408 : 47 C. L. J. 457 : 110 I. C. 338.

S. 32—contd.

—*Jamawasil baki* and *jambandi* papers can be admitted in evidence under s. 32 (2) but it must be clear that the persons who made them are dead and that the papers were made in the ordinary course of business. An entry as to the rate of rent cannot be distinguished from other entries therein as not made in the ordinary course of business. 90 I. C. 564 : 1926 Cal. 359.

—writer of the *Jama wasil baki* papers proved to be 45 years old may be presumed to be dead at the time they are tendered in evidence. 55 C. 1216 : 49 Cr. L. J. 70 : 114 I. C. 485 : 1929 Cal. 110.

—entries made by an Amin in the *khatian* and *chitta* must be presumed to have been made in the ordinary course of business and are admissible in evidence under s. 32 (2). 32 C. W. N. 759 : 55 Cal. 1070 : 1928 Cal. 448. 108 I. C. 585.

—statement of deceased person as to relationship is not admissible. 68 I. C. 566.

—papers, books and statements of a family priest of *Hardwar* are admissible in evidence to prove relationship under s. 32 Evi. Act. 6 Lab. L. J. 550 : 84 I. C. 912 : 1925 Lab. 281.

—In considering the evidence as to the date of birth of a plaintiff, horoscopes are not proof in themselves but they could be used for refreshing the memory or as statements of a deceased person under s. 32 Evi. Act. 10 O. L. J. 164 : 83 I. C. 840.

... to prove
... therein
... was alive
... : 28 O. W.

—in the absence of the condition prescribed by s. 32 Evi. Act a plaint filed in a prior litigation is not admissible to prove a statement by a superior landlord. 28 O. W. N. 1033 : 39 O. L. J. 90 : 80 I. C. 357.

—a family pedigree as used in s. 32 (6) of the Evi. Act is not strictly confined to the description of the term in the Privy Council case in 30 All. 510. 8 N. L. J. 29 : 86 I. C. 847.

—where the persons who gave the names of the relatives to the witness who compiled the pedigree table are not proved to be the pedigree table is
I. C. 927.

... mmittal inquiry was
... trial, held though
... not of much evidentiary value. 88 I. C. 854 : 40 Cr. L. J. 1450.

—entries in the register (*purohit book*) was not held under the circumstances of the case to be evidence as to the date of death. 26 Bom. L. R. 563 : 46 M. L. J. 541 P. C.

—entries in the books of priests at places of pilgrimage visited by Hindus are admissible for proving relationship. 1930 Lab. 579 : 31 Punj. L. R. 509.

S. 32—contd.

—recitals as to the boundary or identity of lands made in documents of third persons are admissible in evidence under this section when the executants are dead. 44 C. L. J. 582 : 99 I. C. 907 : 1927 Cal. 230, 44 C. L. J. 587 : 1927 Cal. 234 : 99 I. C. 910, 1928 Cal. 63

—recitals of boundaries in a sale certificate of adjoining lands are not admissible to prove the facts contained therein. 1928 Cal. 893 : 110 I. C. 521

For other cases on this point see cases under s. 11 Evi. Act.

S. 33.

—for a former deposition to be admissible it must be proved that proceedings were between the same parties and issues were the same. 23 C. 441.

—where the only evidence that a witness could not be found was the statement of a Police officer and it was stated that he could not be found on search and that a warrant was also issued, held that sufficient ground was not established for the admission of the previous deposition of the witness under s. 33. 41 C. 601 : 19 C. W. N. 729

—the evidence given by an attesting witness in a mortgage bond in an inquiry by a Sub-Registrar is admissible in a regular suit in the civil court if the witness was duly cross-examined. 18 C. W. N. 605.

—but the evidence in the ejectment proceeding before the revenue authorities cannot be legally relied upon in a suit in the civil court. 1928 Lah. 43.

—under s. 33 the court should not rely on the deposition and clearly in order to prove propriety. 1930 Cal. 766 :

—the deposition of a witness is not admissible under s. 33 unless one or other of the requirements of the sec. is satisfied. The mere fact that the witness did not appear as a witness when cited on behalf of the plff. or that he appeared as a witness when cited on behalf of the deft. on one occasion but was not examined, will not be ground for admitting the prior deposition. 30 C. W. N. 254.

—when a witness who was related to the accused gave material evidence before the Magistrate but was absconding and the Sessions Judge made his deposition before the Magistrate as part of the evidence in the case the procedure was not illegal. 35 C. W. N. 143, but before the Sessions Judge transfers such deposition to his own record he must take evidence and he must arrive at a judicial decision that the witness cannot be secured, and cannot rely on the statement of the Public Prosecutor only. 1930 L. 1041 : 1930 Cr. C. 1217, similar case, 1930 Cr. C. 1156 : 1930 766, 39 M. 449.

—before the previous deposition can be placed on the record of a criminal trial the Court must decide judicially that

S. 33—*contd.*

effort had been made on behalf of the prosecution to secure the presence of the witness as required by the sec. The fact that the counsel for the accused gave his consent does not make any difference. 1929 Lah. 542; 30 Cr. L. J. 623; 3 Punj L. R. 192; 116 I. C. 329 followed in 1930 Cr. C. 1156; 1930 Cal. 766, 39 M. 449.

—the deposition given in proceeding under s. 145 Cr. P. C. by one of the defts. as a witness for the other deft. cannot be admitted as the deft. had no opportunity to cross-examine. 30 C. W. N. 254.

—the affidavit of a person who has died subsequently without being subjected to cross-examination is not admissible in evidence. 52 M. L. J. 477; 102 I. C. 243; 1927 Mad. 507; 38 M. L. T. 275.

—the true reading of this sec. is that the adverse party in the first proceeding had "both the right and opportunity to cross-examine", and not "the right or opportunity to cross-examine" 31 C. W. N. 369; 34 Bom. L. R. 487; 51 C. L. J. 230; 1930 A. L. J. 122; 58 M. L. J. 446; 1930 P. C. 79. 122 I. C. 8 P. C.

—where a witness died after examination in chief and partly being cross-examined the deposition could not be admitted in evidence under this section. 50 A. 113; 1928 All. 14; 107 I. C. 243; 25 A. L. J. 775, 5 C. W. N. 230 *Ref*

—in a warrant case until the stage described in s. 256 Cr. P. C. is arrived at the accused has no right to cross-examine so the evidence of a witness given before framing of the charge is not admissible under s. 33 Evi. Act. 1929 Cal. 822; 1929 Cr. C. 669.

—where the committing M. recorded the statement of a witness and the accused did not exercise his right of cross-examination and the witness died before the case was tried by the S. J. the statement was admissible. 31 C. W. N. 410; 28 Cr. L. J. 485; 101 I. C. 661; 1927 Cal. 398.

—each case under s. 33 must depend upon its own facts and circumstances of the case. Where a witness was examined whereabouts could not be traced the Sessions Judge the evidence taken into account. 33 C. W. N. 57 Q. 243.

—former deposition of a person still alive may be admissible in evidence with the consent of the parties. 104 I. C. 518; 39 M. L. J. 198

—the provisions of s. 33 are in no way affected by s. 350 Cr. P. C. 101 I. C. 484; 1927 Lah. 332; 28 Cr. L. J. 451.

—the expression "representatives in interest" must include privies in estate. 5 P. 777; 8 Pat. L. T. 510; 101 I. C. 289; 1927 Pat. 61, 102 I. C. 713; 1927 Mad. 733.

—whether a person is the legal representative of another or not for the purpose of recording the evidence admissible under this section must be determined from the state of affairs when the evidence is sought to be admitted. Deposition in the previous suit in different capacity is not admissible. 51 M. 893; 55 M. L. J. 894; 1928 Mad. 994; 116 I. C. 673, F. B. 1927 Mad. 733 approved.

S. 34 (Entries in books of account when relevant).

—account books that are regularly kept are corroborative evidence. 6 C. W. N. 401 : 29 C. 334, P. C. 51 A. 519 : 1929 All. 170 : 116 I. C. 285 : 27 A. L. J. 115

—the entry need not be made at the time of occurrence. It is sufficient if it is made within reasonable time. 4 C. W. N. 147 : 27 C. 118 P. C. 9 C. W. N. 421 : 32 C. 582

—entries should not be made from day to day or from hour to hour to make them admissible under s. 34 E. Act. 4 C. W. N. 147 : 27 C. 118 P. C. 4 B. 576 overruled. 5 Pnt. 777 : 95 I. C. 128 : 1926 Nag 407

—an account need not be written from day to day. 25 B. 616.

—but accounts prepared at considerable intervals from memory or possibly inadequate materials cannot be treated as proof of the actual state of things though they may be used as corroborative evidence. 51 M. 291 : 109 I. C. 153 : 54 M. L. J. 703 : 1928 Mad. 180

—books of account even if not corroborated are admissible in evidence but unless corroborated they are not sufficient to charge any one with liability. Difference between s. 32 cl. (2) and s. 34 shown. 55 C. 1167 : 108 I. C. 833 : 32 C. W. N. 580 : 1928 Cal. 854, 51 A. 686 : 121 I. C. 819 : 31 Cr. L. J. 356 : 1930 Cr. C. 54 : 1930 All. 38, 1930 A. L. J. 987.

—plff's own statement on oath in support of entry can be sufficient to support the entries in plff's account books to fix the debt with liability. 84 I. C. 909 : 6 Lah. L. J. 504 : 1925 Lah. 242.

—entries in books of account are admissible not only for refreshing witness's memory, but also as corroborative evidence. 6 C. W. N. 401, P. C.

—where the witness gives reply by referring to account-books but the account books are not exhibited, his evidence is not admissible. 1930 Mad. 693 : 1930 M. W. N. 362 : 31 L. W. 792.

—books of account recording a particular transaction are less reliable than books containing miscellaneous matters. 6 C. W. N. 401, P. C.

—absence of entry is relevant, not under s. 34 but under Ss. 9 and 11 Evi. Act. 19 C. W. N. 612.

—every entry in account must be proved. 13 C. L. J. 139 : 15 C. L. J. 621, 96 I. C. 429 : 1926 Mad. 955.

—account books must be proved by clerks who kept them or some person competent to speak to the facts. 6 M. I. A. 88 P. C. 1932 Lah. 388, 100 I. C. 863 : 1927 Nag 177.

—*jama washil baki* papers are themselves no evidence and they must be produced by person who collected rent with the assistance of those papers. 8 C. 926 : 8 W. R. 328. They are only corroborative evidence. 10 W. R. 291, 10 C. L. R. 545. They may be used to refresh memory and to prove rent, 10 C. 248 ; when filed at the citation of the tenants they are good evidence. 10 W. 193, 14 I. A. 142 : 9 A. 718 P. C.

S. 34 (Entries in books of account when relevant)—*contd.*

—*jama washil baki* papers may be admissible as statement of deceased persons under s. 32 (2) Evi. Act. 90 I. C. 564 (c) but when they are not admissible under s. 32, they are merely corroborative evidence under this section. 45 C. L. J. 253; 104 I. C. 733; 1927 Cal. 855.

—*jama bandi* paper forming part of the record of a proceeding of substantial evidence.

evidence to charge any evidence under s. 32 cl.

—absence of entry in account book is evidence. 19 C. W. N. 612.

—s. 34 does not limit in any way at all the nature of the material upon which the court may rely to support the statements in a book of account. Such material may take the shape of contemporary vouchers, receipts or other documentary evidence or sworn oral testimony. 88 I. C. 383; 1925 All. 743.

—if certain number of entries are proved to be bogus by independent evidence which precludes the possibility of error or accident, account books are sufficiently discredited thereby. 24 N. L. R. 40; 47 C. L. J. 222; 30 Bom. L. R. 296; 1928 P. C. 39; 107 I. C. 113 P. C.

—in the absence of evidence of specific sums having been paid, only the production of account books and general statement of the plaintiff that there were dealings between him and the defendant are not sufficient to charge the defendant with liability. 1927 Lab. 903; 100 I. C. 862, 1924 Lah. 540, 1922 Lab. 338, 1923 Lah. 430, 82 P. R. 1914, *fol.*

Ss. 35-39. (Relevancy of entries in Public records, maps, plans, Acts, Law-books.)

—a record plan neither shown to be prepared by public servant nor shown as forming the act or record of public officer is not admissible. 1930 All. 26; 31 Cr. L. J. 133; 1930 Cr. C. 42; 1930 A. L. J. 244; 120 I. C. 547.

—entries in *batwara* papers are valuable pieces of evidence. 29 C. W. N. 333; 86 I. C. 835; 1925 Cal. 635.

—*batwara* papers are admissible in evidence against strangers, 87 I. C. 694; 1926 Cal. 115.

nissible, 68 I. C. 676, as it is prepared under the provisions nissible as a public document. 10 Pat. L. T. 399.

prepared under s. 54 of B.

E. P. Act VII of 1871 are admissible in evidence independently of s. 35 where some introductory evidence is given. 59 I. C. 963 (C).

—entries in *batwara* papers are admissible but it is for the court to decide whether they rebut the presumption of Record of Rights. 63 I. C. 226; 36 C. L. J. 389.

ss. 35-39. (Relevancy of entries in Public records, maps, plans, Acts, Law books, etc.—*contd.*)

—like the maps and surveys in India, for Revenue purposes an entry in the Record of Rights operates between landlords of neighbouring estate as between landlords and tenants of the same estate or between tenants and tenants. 5 Pat. L. J. 681 : 2 Pat. L. T. 81 59 I. C. 298.

—Settlement Reports or District Gazetteers may be referred to, though not strictly under s. 35 47 C. W. N. 857 : 39 A. 37 *Ref.*

—entries in the Settlement Khawat is admissible. 1925 Cal. 116

—record of rights is admissible under s. 35 and a record will have a presumptive value of correctness 30 C. W. N. 689. 96 I. C. 959 : 1926 Cal. 862

—a village record not prepared by a settlement officer is only a piece of evidence and no presumption of correctness is attached to it. 3 Pat. L. R. 225 90 I. C. 579 : 1925 Pat. 754.

—*hissakari* papers are not admissible. 59 I. C. 8.

—the thak and survey maps are valuable evidence of the state of things at the time they were made but they do not show conclusively what was the state of things at the time of Permanent Settlement. 34 C. L. J. 141, 36 C. L. J. 336 : 65 I. C. 182, 30 C. 291 : 65 I. C. 866 *Ref. contra* 2 Pat. 839.

—thak statements are admissible in evidence and have evidentiary value unless they deal with matters beyond the scope of the survey 49 C. L. J. 112 : 32 C. W. N. 289 : 113 I. C. 465 : 1929 P. C. 50 : 56 I. A. 74.

—the Revenue Survey map is more reliable than the thak map. 96 I. C. 1027 : 1926 Pat. 385.

—there is no inflexible rule that survey map should have the preference over a thak map. 34 C. L. J. 465 : 35 C. 621.

—Thak authorities had nothing to do with title and possession, therefore nothing can be legitimately deducted from the thak map as to title or possession. 31 C. W. N. 473 : 1927 Cal. 403 : 46 C. L. J. 322 103 I. C. 13.

—though Rennell's Survey Map made in 1764 and before the Permanent Settlement is valuable evidence on the topography, the absence of certain rivulet therein is not conclusion of its non-existence. 34 C. W. N. 1113.

—much weight cannot be attached to a partition paper in the absence of detailed information as to the history of the document, when it was prepared, by whom, in whose presence and for what purpose. 1923 Cal. 261 : 74 I. C. 383 : 36 C. L. J. 389.

—a map made for the purposes of a partition which affected the public revenue is admissible in evidence for what it is worth, though it may be for a limited purpose only. 90 I. C. 643.

—a Quinquennial Register of 1795 kept under the Bengal Regulation 48 of 1793 is admissible in evidence to rebut the

Ss. 35-39. (Relevancy of entries in Public records, maps, plans, Acts, Law books, etc.)—*contd.*

sumption under the B. T. Act. s. 50 (2). 86 I. C. 538 : 1925 Cal. 1037 : 1926 Cal. 290.

—where a certain map was referred to in the commissioner's report but the map was not produced, the report of the commissioner is admissible in as much as no objection was taken to the report and the Commissioner himself was not examined or cross examined. 50 C. 446 : 45 M. L. J. 444 : 1923 M. W. N. 511 : 32 M. L. T. 162 P. C.

—*thakbust kashra* has no evidentiary value. 3 Pat. L. R. 605 : 36 C. L. J. 499 : 1922 P. C. 272

—*kistwari* maps are evidence of possession. 3 Pat. L. T. 140 : 64 I. C. 326.

—the entry from the back shown to have been made by a duty or in the performance of inadmissible in evidence. 28 I. C. 719.

—Road Cess Returns are admissible only against the maker of them. 42 C. L. J. 14 : 39 I. C. 747 : 1925 Cal. 1189, 39 C. 995 : 39 C. 1005, 18 C. L. J. 633. *Ref.*

—maps prepared under the Calcutta Survey Act have great evidentiary value as regards title. 31 C. W. N. 419 : 1927 Cal. 345 : 45 C. L. J. 474 : 102 I. C. 370.

—a site plan prepared for the purpose of a casa can have a very little probative value as the question of title. 1930 All. 26 : 1930 Cr. O. 42 : 31 Cr. L. J. 133 : 120 I. C. 517 : 1930 A. L. J. 244.

—statements contained in public documents are receivable to prove the facts stated on the general ground that they were made by authorised agents of the public in the course of official duty and respecting facts which were of public interest or required to be recorded for the benefit of the community. 30 C. W. N. 101, 6 Lah. 269 : 23 A. L. J. 639 : 86 I. C. 654, P. C.

—entry in village note is the record of rights as to the conservation of trees by reclaimer is admissible. 8 Pat. 266 : 1929 Pat. 328 : 10 Pat. L. T. 311.

—facts stated in the official reports are valuable and in many cases are the best evidences. 55 C. 403 : 47 C. L. J. 150 : 107 I. C. 7 : 32 C. W. N. 621 : 1928 P. C. 10 : 30 Bom. L. R. 251 P. C.

—a certified copy of the entry in the Register given by an authorised officer must be presumed to be correct under a. 39 Evl. Act. 22 A. L. J. 690 : 46 A. 637.

—Death Register kept in Police station is official book. 87 I. C. 938 : 1925 All. 79.

—register of death and birth is admissible. 41 M. 24 : 22 C. W. N. 22.

—a Death Register is a public document and will in ordinary circumstances be bound to be accepted as conclusive of the dates of the death recorded. 1925 M. W. N. 232 : 88 I. C. 249 : 1925 Msd. 1005.

Ss. 35-39. (Relevancy of entries in Public records, maps, plans, Acts, Law books, etc.)—*confd.*

—If the death register was prepared in a somewhat casual way it is open to the court to place no reliance on it if the fact of the death of a person on a particular day is sought to be proved. 1930 Cal. 636

—a statement made by the father in the vaccination Register three years after the birth of the child is not admissible under this sec. as to paternity of the child. 1929 M. W. N. 696.

—a sale certificate is not a public document, so a certificate of guardianship 1928 Cal 893; 110 I. C. 521.

—because a document is admissible for certain purposes, all recitals, statements and references therein cannot be used as proof of the facts to which they relate. 1930 All. 299; 1930 A. L. J. 564.

—s. 39 cannot be invoked for the purpose of letting in a confession relating to which the bar created by ss. 24, 25 and 26 has not been removed by s. 27 1929 Lah. 344; 30 Pooj. L. R. 197; 10 Lah. 283. 11 Lah. L. J. 159 115 I. C. 6; 30 Cr. L. J. 414 F. B.

Ss. 40-44 (Judgment when relevant).

—s. 40 deals with estoppel, but many judgments may be evidence *inter partes* which are not estoppels 6 C. 171 F. B. but see *below*

—the above case has been dissented from in a recent Full Bench case where it has been held that s. 40 applies to a case in which the court has jurisdiction to decide a matter and one party

EVIDENCE UNDER ANY SECTION OF THE EVID. ACT. 6 C. 141; 6 C. L. R. 439 F. B. See also 13 C. 352 F. B., 10 B. 4301, 12 A. F. B. In 20 C. W. N. 643; 23 C. L. J. 583. Mookherjee J. observed, "it is well settled that although a judgment not *inter partes* may be used in evidence in certain circumstances as a fact in issue or a relevant fact, or possibly as a transaction as was held in 22 C. 533 P. C., 1 C. W. N. 265; 19 A. 277, P. C., 6 C. W. N. 386; 29 C. 187 P. C., 25 C. 522; 2 C. W. N. 501 F. B., the recitals in the judgment cannot be used as evidence in a litigation between other parties. The principle is that all judgments are conclusive of their existence, as distinguished from their truth; *judgments* of a solemn nature, are presumed judgment is therefore, conclusive whether parties, privies or strangers legal effect, as distinguished from the accuracy of the decision rendered."

—the rule in 6 C. 171 F. B. and 13 C. 352 cases has been materially qualified by the Privy Council in 22 C. 533 P. C., 25 C. F. B. The judgment not *inter partes* is admissible under s. .

Ss. 40-44. (Judgment when relevant)—contd.

show conduct of the parties or instances of exercise of a right or admissions of parties or to identify property or to show how it has been previously dealt with. 21 B. 591; the following are the cases on the same principle, 12 M. 9p. 13, 10 A. 585p. 586, 15 M. 19, 18 M. 73p. 77, 23 C. 693, P. 697, 11 C. L. R. 528, 15 C. 233, 236, 5 Bom. L. R. 230 P. 222, 25 A. 546; 23 A. W. N. 137, 12 C. W. N. 739p. 745, 35 C. 701; 12 C. W. N. 657; 7 C. L. J. 563, 6 C. L. J. 22 (in this case the judgment *not inter partes* was held to be evidence to show that the landlords recognised the plaintiff in *Kashkar* and that the rent-receipt granted to the defendants were fraudulent). 18 C. W. N. 951.

—under s. 40 the judgment in prior suit is relevant to determine if it operates as *res judicata* under s. 11 C. P. C. Such judgment in rent suit concludes the trial of the question as to what was the rate of rent at the date of the suit, if the decree shows that that point was decided. 43 C. L. J. 135, 1926 Cal. 698; 95 I. C. 130.

—a judgment is conclusive proof of its correctness. 1925 Cal. 194.

—s. 41 deals with judgment *in rem*. 6 C. 171 P. C., 12 A. 1 F. B.

—no judgment except that passed by a court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction can have the effect of a judgment *in rem*. 1928 All. 395; 26 A. L. J. 797.

—when a judgment operates as a judgment *in rem* (as the decision on a probate court does under s. 41 Evi. Act) it cannot be attacked by any other person so long it remains in force. 34 C. L. J. 457.

—s. 41 provides that the finding of the civil court in matters of granting probate is conclusive. 4 C. W. N. 176 n., 12 C. L. J. 91, 12 C. L. J. 185.

—the judgment in probate proceedings is a judgment *in rem* and is binding not only on the parties to the proceedings so far as the genuineness or otherwise of the will is concerned but also on all other persons. 9 Pat. 698, (12 C. L. J. 91, 185, 79 I. C. 44) *Ref.*

—s. 44 lays down not only a rule of law relating to evidence, but also a rule of procedure; under this sec. any party is competent to show that judgment *inter partes* was obtained by fraud. If the party is precluded from avoiding a decree on the ground of his own fraud, he is precluded not by any rule of evidence but by the general principle of justice which prohibits a person to plead his own fraud. 27 C. 11; 3 C. W. N. 660.

—the words 'not competent' in sec. 44 refer to a court acting without jurisdiction. 21 B. 205.

—competency of a court and its jurisdiction are synonymous terms. 21 B. 205.

—a finding not essential to a probate action does not operate as a finding *in rem*; finding as to the execution of the will binds at any rate the parties and privies to probate proceedings. 5 P. 777; 101 I. C. 289; 1927 Pat. 61.

Sa. 40-44. (Judgment when relevant)—contd.

show conduct of the parties or instances of exercises of a right or admissions of parties or to identify property or to show how it has been previously dealt with. . . . the cases on the same principle, 12 . . . 19, 18 M. 73p. 77, 23 C. 693, P. 697, 1 . . . Bom. L. R. 230 P. 222, 25 A. 546: 23 & . . . 745, 35 C. 701: 12 C. W. N. 657: 7 . . . case the

judgment not *inter partes* was held to be evidence to show that the landlords recognised the plaintiff in *Kashkar* and that the rent-receipt granted to the defendants was fraudulent). 18 C. W. N. 954.

—under s. 40 the judgment in prior suit is relevant to determine if it operates as *res judicata* under s. 11 C. P. C. Such judgment in rent suit concludes the trial of the question as to what was the rate of rent at the date of the suit, if the decree shows that that point was decided. 43 C. L. J. 135, 1926 Cal. 698: 95 I. C. 130.

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—no judgment except that passed by a court in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction can have the effect of a judgment *in rem*. 1928 All. 395: 26 A. L. J. 797.

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the judgment in probate proceedings is a judgment *in rem* of the proceedings so far as is concerned but also on all 185, 79 I. C. 44) Ref.

—s. 44 lays down not only a rule of law relating to evidence, but also a rule of procedure; under this ssn. any party is competent to show that judgment *inter partes* was obtained by fraud. If the party is precluded from avoiding a decree on the ground of his own fraud, he is precluded not by any rule of evidence but by the general principle of justice which prohibits a person to plead his own fraud. 27 C. 11: 3 C. W. N. 660.

—the words 'not competent' in sec. 44 refer to a court acting without jurisdiction. 21 B. 205.

—competency of a court and its jurisdiction are synonymous terms. 21 B. 205.

—a finding not essential to a probate action does not operate as a finding *in rem*; finding as to the execution of the will binds at any rate the parties and privies to probate proceedings. 5 P. 777: 101 I. C. 289: 1927 Pat. 61.

S. 47. (Opinions as to handwriting when relevant)—contd.

—evidence of expert is not admissible if the proved or admitted handwriting is not compared in open court. 39 C. 606: 16 C. W. N. 812.

—in order to prove the handwriting or signature of another person one must show that he is acquainted with the handwriting or signature of that person. 4 Pat. 394: 1924 Pat. 787.

—person proving handwriting must prove his acquaintance with the handwriting to be proved. 92 I. C. 1034: 1925 Pat. 778: 7 Pat. L. T. 507.

—a court of law ought not in the absence of any evidence take upon itself the duty of comparing handwriting and pronounce judgment based merely on its own inspection. 78 I. C. 668 (C), 1923 Cal. 485.

—comparison of handwriting is hazardous and inconclusive proof and in the absence of expert evidence regarding the same should not ordinarily be the basis of decision. 29 C. W. N. 75: 1925 Cal. 145: 85 I. C. 525.

—the word "habitually" means "usually," "generally" or "according to custom." It does not refer to the frequency of the occasions but rather to the invariability of the practice. 27 Bom. L. R. 1031: 89 I. C. 1042: 1925 Bom. 429.

—when the witnesses depose in favour of a document, the court would not, although satisfied that the signature was not that of the alleged testator, declare the will to be a forgery in the absence of other corroborating evidence. 41 C. L. J. 300: 87 I. C. 534: 1925 Cal. 768.

—opinion of dead person cannot be proved save under s. 32. 1925 Cal. 116.

—the witness need not state in the first instance how he knows the handwriting; opposite party is to explore the sources of knowledge: 28 B. 58 p 62: 5 Bom. L. R. 663.

—evidence of mere similarity of handwriting is extremely weak in probative force, but when it is strongly supported by other facts, the judge should consider it. 13 W. R. 191, 64 I. C. 234, 66 I. C. 774.

—ordinary methods of proving handwriting are (1) by the admission of person concerned; (2) by calling the writer or one who saw it written or one who is qualified to express an opinion as to the handwriting under sec. 47: (3) by comparison of handwriting as provided by sec. 73: but the last mode is always hazardous and inconclusive. 37 C. 467: 14 C. W. N. 1114, 26 C. W. N. 113: 34 C. L. J. 373, 64 I. C. 234, 66 I. C. 773.

—although from dissimilarity of signature a court may legitimately draw an inference that a particular signature is not genuine

26 C. W. N. 113: 34 C. L. J. 373.

S. 50. (Opinion on relationship when relevant)—*contd.*

—where the question is whether one person is related to another in any degree, the fact that according to the religious usages the names of particular persons are usually recited or omitted during the performance of ceremonies, and the observance of pollution are instances of conduct. 26 I. C. 110, 48 M. I. 1925 Mad. 497.

—every presumption ought to be made in favour of marriage where there had been a lengthened cohabitation, specially in a case where the alleged marriage took place so long ago that it is difficult to get a trustworthy account of what actually occurred. 21 C. 666 P. C. (27 C. 801, 9 C. W. N. 352) Dist 2 C. 184 P. C., 3 M. I. A. 295, 10 C. L. R. 203.

—under the English law general reputation is admissible to establish the fact of marriage but under this section opinion as expressed by conduct only is admissible and there is no other provision making general reputation admissible. 91 I. C. 469: 1926 Mad. 473.

—character and conduct of relatives are not relevant in proof of marriage 33 C. W. N. 645: 1929 P. C. 135: 31 Bom. L. R. 846: 50 C. L. J. 89: 1929 M. W. N. 676: 10 Lah. 97: 27 A. L. J. 465: 57 M. L. J. 366: 117 I. C. 17 P. C.

S. 51. (Grounds of opinion, when relevant).

—in all valuation judicial or otherwise, there must be room for inference or inclination of opinion which being more or less conjectural, are difficult to reduce to exact meaning or to explain to others, so it would be unfair to require an exact exposition of reasons for the conclusion arrived at. 28 A. 121 (128) P. C.

Ss 52-55. (Character when relevant).

—general evidence of bad character cannot be given for the prosecution and against a prisoner. 7 W. R. Cr. 7, 6 W. R. Cr. 72, 32 Bom. L. R. 324: 1930 Cr. C. 481: 1930 Bom. 157.

—in mitigation of damages the defendants can give evidence of the plaintiff's bad character. 37 C. 760: 14 C. W. N. 713.

—except under exceptional circumstances, the proper object of using convictions is to determine the amount of punishment to be awarded. 11 Bom. H. C. 92

—a previous conviction is relevant on the question of punishment and is also relevant with reference to the question whether the provisions of a 562. Cr. P. C. would apply to the case. 39 B. 326

—evidence of bad character including a previous conviction is irrelevant to help to establish an accused person's guilt but they may be taken into account in passing sentence. 52 M. 358: 30 Cr. L. J. 471: 115 I. C. 483: 1929 M. W. N. 393: 1929 Mad. 306.

—evidence of previous conviction is not admissible unless the accused produces evidence of his good character. 5 Pat. L. J. 706, 60 I. C. 331.

—the character of the accused not being a fact in issue in the offence of belonging to a gang of persons associated for the purpose of habitually committing theft punishable under s. 401 I. P. C.

S. 52-55. (Character when relevant)—*contd.*

evidence of bad character or reputation is inadmissible for the purpose of proving the commission of the offence. 1 O. W. N. 146.

—but a previous conviction of dacoity has been held relevant under section 14. 97 O. 139.

—evidence of previous act of dishonesty is admissible to prevent the accused to plead that the act under consideration was committed without a dishonest intention. 102 I. C. 492; 1927 Lah. 549; 28 Cr. L. J. 556; 28 Punj. L. R. 313.

—evidence of bad character is not admissible to prove that the accused were of such a disposition that they were likely to commit the crime, but there is no bar to adduce evidence which proves a motive for the crime or which is otherwise relevant. 93 I. C. 884; 27 Cr. L. J. 484; 1926 Pat. 232; 7 Pat. L. T. 396.

—where certain persons were accused under a. 400 I. P. O. the evidence of the commission of other offences than dacoity was only evidence of bad character and was inadmissible under sec. 54. 32 M. 179.

—s. 54 has no bearing whatever upon the question of the relevancy of previous conviction after an accused has been convicted of the offence charged and for the purpose of enhancing the sentence to be passed on him. 1929 Rang. 200; 29 Cr. L. J. 869; 111 I. C. 453 F. B.

—a man's guilt is to be established by proof of the facts alleged and not by proof of his character; such evidence might create a prejudice but not lead a step towards substantiation of guilt. 42 O. 957.

—where the judge in the Lower Court had stated that the general reputation of character enjoyed by the two identifiers of a party registering a will tended to throw a cloud of doubt on the transaction, it was held by the P. C. that such evidence of the general reputation of the character of those persons, who were both dead, ought not to have been admitted. 10 O. W. N. 522; 3 C. L. J. 349 P. C.

—in a case of damage for libel charging the plaintiff with seditious acts it was held that the deportation of the plaintiff was evidence as throwing light on the character of his agitation previous thereto and as thus affecting damages. 37 C. 760; 14 C. W. N. 713.

—before a man of past good character is adjudged guilty the evidence against him must be of an unimpeachable character. 1928 Lah. 647; 29 Cr. L. J. 740; 10 Lah. L. J. 262; 110 I. C. 676; 29 Punj. L. R. 703.

Ss. 56-58. (Facts which need not be proved).

—the court is to take judicial notice of the gazetted holiday. 16 N. L. R. 198.

—the Court can take judicial notice of facts transpiring before it. 121 I. C. 337.

—an unregistered lease set up in the plaint and admitted in written statement need not be proved. 2 Lah. L. J. 253.

Ss. 56-58. (Facts which need not be proved)—contd.

—the court is to take judicial notice of the signature of the Chief Secretary of Government. 44 M. L. J. 557; 1923 M. W. N. 290; 32 M. L. T. 300; 72 I. C. 515, 42 M. 885, 56 C. 135.

—the court can take judicial notice of the signature of a Sub-Registrar. 105 I. C. 422; 47 C. L. J. 118; 1928 Cal. 154.

—the Court can take judicial notice of the fact that the transit of a registered letter takes 24 hours longer than ordinary letter. 99 I. C. 622; 1927 All. 215.

—no judicial notice should be taken of thefts on the Railways. 1928 Lah. 837; 111 I. C. 523; 10 Lah. 329, 95 I. C. 945 *Rel. on*.

—the question relating to title to wakf properties does not relate to a matter of public policy and the historical records cannot be used to establish title to such property. 1930. Lah. 744; 31 Punj L. R. 372, 46 I. C. 119 *fol*.

—the court cannot take judicial notice of a Government Notification under s. 57, but the production of a gazette is sufficient proof of the Notification under s. 78. 1928 All. 355; 107 I. C. 578.

—the proceedings of Parliament may be proved under s. 78 (2) by the Journals of the House of Commons or by copies purporting to be printed by order of the Govt. The subject of judicial notice discussed, and the meaning of sec. 57 Evl Act, explained. 37 C. 760; 14 C. W. N. 713.

—reference of Portuguese work "India Orientalis Christiana" published in 1794, and "Hough's History of Christianity in India" was approved of. 15 M. 241.

—the provision in s. 3 of Act XVIII of 1875 (Law Report Act) does not prevent a H. C. from looking at an unreported judgment of other Judges of the same court. 29 C. 289.

—s. 58 has no general application to divorce cases. 49 B. 368; 27 Bom. L. R. 251; 1925 Bom. 231.

—s. 58 normally relates to agreed statements of facts made between both parties to save time and expense at a trial. 49 B. 368; 27 Bom. L. R. 251; 1925 Bom. 231.

—s. 58 applies to criminal trials as well as to civil suits. 91 I. C. 233; 1926 Oudh. 245.

Ss. 59-60. (Oral evidence.)

—part of the oral evidence may be disbelieved and part believed. 4 C. W. N. 18 P. C., 5 C. W. N. 858.

—discrepancies often trifling in themselves should not be made the ground for disbelief. 27 C. 639; 4 C. W. N. 429; 2 Bom. L. R. 562 P. C.

—hearsay evidence should be disregarded. 2 C. W. N. 193; 20 A. 209 P. O., 6 Lah. L. J. 575; 1925 Lah. 733.

—if oral evidence refers to an opinion or the grounds on which that opinion is held it must be the evidence of the person who holds that opinion on those grounds. But it must be the expression of independent opinion based on hearsay and not repetition of hearsay. 5 C. W. N. 33; 23 A. 37; 10 M. L. J. 267 P. C.

Ss. 59-60. (Oral evidence)—contd.

—under s. 60 the court is entitled to consider and act upon the opinion of experts contained in treatise to which it is referred. 25 M. L. J. 54 F. B., 22 C. W. N. 745 : 28 C. L. J. 32 : 46 I. C. 593.

even if newspapers are admissible in evidence without formal proof, the paper itself is not proof of its contents. It would merely amount to an anonymous statement. 7 Lah. L. J. 264 : 88 I. C. 22 : 1925 Loh 299.

—the evidence that the witness saw the document and heard it read out by somebody else is only hearsay so far as the contents are concerned and does not fulfil the requirements of s. 60 as to the oral evidence generally. 25 A. L. J. 65 : 31 C. W. N. 21 : 100 I. C. 1 : 28 Pooj L. R. 109 : 29 Bom. L. R. 800 : 1927 P. C. 15.

S. 61. (Proof of contents of documents.)

S. 62 (Primary evidence.)

S. 64. (Proof of documents by primary evidence.)

—in dealing with documentary evidence, the substantial principles on which the authenticity and value of evidence rest, ought to be observed. 14 M. I. A. 570 p. 588. P. C.

—secondary evidence should not be accepted without sufficient reasons being given for the non-production of the original. 3 M. I. A. P. C., 14 M. I. A. 453, 570 P. C.

—written receipts for payments are important but by no means necessary as proof nor are they of the nature of primary evidence, the loss of which must be shown in order to let in secondary evidence. 4 C. W. N. 18.

—if account books are regarded merely as memoranda and rough books and if the regular accounts be prepared upon an examination of the said memoranda, they could hardly be regarded as original accounts. 9 C. W. N. 421.

—the mere fact that a person producing a document (chitta) used the same to settle disputes between the villagers and before him it was in the possession of his father does not make the document a true copy of the original. 1929 Col. 459 : 49 C. L. J. 546 : 122 I. C. 552.

At last, the court has said—

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... a copy of another newspaper original, each being printed.

1930 Loh. 371 : 31 Cr. L.

Ss. 63, 65, 66. (Secondary evidence).

—secondary evidence should not be accepted without sufficient reason for the non-production of the original. 3 M. I. A. 156 P. C., 14 M. I. A. 453, 570 P. C., 97 I. C. 82 : 1926 All. 741.

Sa. 63, 65, 66. (Secondary evidence)—contd.

—there is distinction between the admissibility of evidence and the manner of proof. Secondary evidence may be allowed only when primary evidence is itself inadmissible. When the law declares that a document is not to be received in evidence, at, though it may be received in evidence by secondary evidence.

—whether secondary evidence should be admitted depends largely on the discretion of the Judge of first instance and his decision should not be reversed in a very clear case. 15 M. L. J. 157. 1928 M. W. N. 796 : 1928 Mad. 1255 : 115 I. C. 509. 24 O. C. 272 : 48 I. A. 365 P. C., but mere assertion of loss in application only without proof is not sufficient. 3 A. 539. I. C. 839 : 1927 Nag. 214.

—a copy of a copy is not secondary evidence, 15 M. L. J. 157.

—a copy of a copy is admissible in evidence by the consent of the parties. 1928 M. W. N. 796 : 1928 Mad. 1255 : 115 I. C. 509.

—proof of loss by the custodian only is sufficient, 24 O. C. 272 : 48 I. A. 365 P. C., but mere assertion of loss in application only without proof is not sufficient. 3 A. 539.

—a police sub-inspector's report only as to the loss is not sufficient to admit secondary evidence of a lost *bahil*. 4 Lah. L. J. 416.

—a certified copy produced in a previous suit between the parties is not secondary evidence if the document was

the admission
it is not permi-
indicating the
W. N. 226 : 20
2 : 88 I. C. 249 :

—a. 63 is exhaustive of the kinds of secondary evidence. Translation of a document in judgment not *inter partes* is not admissible. 43 M. L. J. 37 : 16 L. W. 11 : 31 M. L. T. 46 : 1922 M. W. N. 432.

—where a primary evidence is inadmissible, secondary evidence thereof can be in no better position, 1922 Lah. 354 : 66 I. C. 153, 18 A. 205, 23 M. 49, 3 Lah. 282, 1922 Lah. 401.

—admission of copy without objection, appellate court cannot question. 1923 Lah. 138 : 1 Pat. 606, 84 I. C. 921 : 1925 Med. 257.

—'seen' in p. 63 (5) includes "read over." 1923 A. 612 : 73 I. C. 654, *contra*, 1923 A. 441 : 71 I. C. 654. — *But see below.*

—the expression "secondary evidence means and includes etc...who has himself seen it" means that the person who is to prove the contents of the document must be a person who has seen the contents of the document *i. e.*, who has read the document and

Ss. 63 65, 66. (Secondary evidence) —contd.

not a person who has seen the document and heard the document read by somebody else 31 C. W. N. 21 : 100 I. C. 1 : 1927 M. W. N. 80 : 8 Pat. L. T. 280 25 A. L. J. 55 : 1927 P. C. 15 : 22 A. L. J. 864 *overruled*.

—“produce” means “procure the production or give it in evidence.” 1930 All 550 : 125 I. C. 460 : 1930 A. L. J. 1003.

—Survey and Settlement Report which was based on *Jamabandi* the original of which was not produced cannot be treated as secondary evidence of the contents of the *Jamabandi* statement under s. 63 cl (5) 1930 P. C. 45 : 32 Bom. L. R. 515 : 123 I. C. 145 P. C.

—evidence as to the general result of the public documents is admissible where the original cannot be conveniently examined in court. 34 C. 293 : 11 C. W. N. 501

—the provision of sec. 65 that a certified copy is the only secondary evidence of a public document does not apply when the original is lost or destroyed 5 P. 777 101 I. C. 289 : 1927 Pat. 61 : 8 Pat. L. T. 510.

—the loss of the original must be proved not only in a case where the document is being enforced but where it is used as evidence 122 I. C. 751.

—the certified copy of a document which is already filed in another court and cannot be produced without unnecessary delay is admissible under s. 65 (c). 1930 Cal. 479.

—evidence should be admitted to be taken in the appellate court as secondary evidence. 155, 26 C. 53, 84 I. C. 541 : 1925 Lah.

—rather secondary evidence which is rejected 50 W. 227.

—allowing secondary evidence depends upon the discretion of the Judges. 71 I. C. 568. order of refusal to admit secondary evidence on the ground that loss of the original was not proved cannot be questioned in revision. 1929 Nag. 288, 1926 Nag. 290, 19 C. 439 P. C. Rel. on 1927 Nag. 286, 1926 Nag. 257, 1924 Cal. 633 *Dist.*

—secondary evidence includes oral accounts given by a person who has himself seen the original document. 7 B. 139.

—where a court permitted oral evidence to be adduced regarding the contents of a letter which was not called for, objection as to its admissibility taken subsequently was allowed. 50 C. L. J. 593 : 1930 Cr. C. 209 : 1930 Cal. 209.

—evidence rejected in a judgment cannot be taken as original statement. 53 M. 952 :

—in evidence other secondary

Ss. 63, 65, 66. (Secondary evidence)—contd.

—when a sale proclamation is not forthcoming the sale certificate may be accepted as secondary evidence as to what was stated in the sale proclamation. 63 I. C. 60 (C).

—secondary evidence of unregistered deed of sale of property less than Rs. 160 was disallowed. 62 I. C. 60 (C).

—where a mortgage deed was lost before its registration secondary evidence was admissible in suit to enforce personal liability. 105 I. C. 502.

—secondary evidence of unstamped agreement of sale was not admissible even as payment of penalty 23 Bom. L. R. 506.

—partnership account must be produced by each party, when one party fails to do that the other party may give secondary evidence and in that case subsequent production of the papers will be disallowed without the consent of the other party or the order of the court under s 164 Evi Act 34 C. L. J. 405.

—except in clear case of miscarriage decision of the trying court as to the sufficiency of grounds for admitting secondary evidence is admissible in evidence. 19 C 438, P. C., 9 W. R. 241.

—absence of objection does not make secondary evidence admissible if it be not legally admitted 26 C. 53: 2 C. W. N. 649. But objection cannot be taken in the appellate court. 31 C. 155, 3 Pat. L. T. 397.

—objection to admissibility of a document may be taken at any stage but objection to mode of proof must be taken at the time of proof 9 C. W. N. 111.

—secondary evidence may be given of an acknowledgment. 13 C 292.

—where the question was whether a *purdanashin* lady was bound by a mortgage-bond purported to be signed by her son-in-law under a general power of attorney which was not produced, secondary evidence of it was not allowed. 29 C. 729 P. C.

—certified copy of mortgage deed is admissible only after notice to the party in possession of its original, but such notice can be dispensed with if there is sufficient reason as for instance if the mortgagee denies the existence of such document. 97 I. C. 348: 1926 Pat. 512.

—where the original of a document could not be traced, but a certified copy taken at a time when it had been filed in a court of law is produced, and its custody is satisfactorily proved, secondary evidence is admissible and there is also a presumption of genuineness. 39 C. L. J. 93: 28 C. W. N. 1033.

—when the opposite party is in possession of the title deed and does not produce it after notice secondary evidence is allowed under s. 65 (c) and 66 Proviso (2). 1931 Bom. 53, 32 Bom. L. R. 1435

—where the original deed is in the possession of the opposite party a production of a certified copy of the registered deed is sufficient proof 1928 All. 394: 116 I. C. 277.

—copy of a lost document bearing endorsement by a deceased predecessor of a party that it was a copy of original is admissible

Ss. 63, 65, 65. (Secondary evidence)—contd.

33 C. W. N. 578 : 52 M. 453 : 31 Bom. L. R. 756 : 49 C. L. J. 566 : 1929 M. W. N. 553 : 117 I. C. 507 : 1929 P. C. 115 P. C.

—where a pro-note was filed in court and was subsequently discovered to have been substituted by a forged one, the plff. was not bound to prove the loss or the cause of its disappearance, and secondary evidence should be allowed. 29 C. W. N. 965 : 23 A. L. J. 109 : 86 I. C. 552 : 49 M. L. J. 132 P. C.

—newspapers are not secondary evidence of the fact mentioned by them 7 Lah. L. J. 264 : 85 I. C. 22 : 1925 Lah. 299.

—where a *pardanashin* woman lives with her brother the service of summons on him instead of the woman constitutes sufficient notice under s. 66. 1929 All. 680 : 118 I. C. 663 : 27 A. L. J. 1091.

—it is doubtful whether a *proforma* deft. not interested in the suit properly or in the decision of the case is not an adverse party as contemplated by proviso (2) of s. 66 1929 All. 680 : 118 I. C. 663 : 27 A. L. J. 1091

S. 67 (Proof of signature and handwriting.)

—ss. 67 to 73 govern cases both of primary and secondary evidence 82 I. C. 306, 1925 All. 56

—"siglog" means the writing of the name of the person so that it may convey a distinct idea to some body else that what the writing indicates is a particular individual whose signature or siglog it purports to be. A "mark" is a mere symbol and does not convey any idea to a person who notes it, very often probably even to the person who made it. 2 C. W. N. 642, 25 C. 911.

—the use of pen and ink is not necessary for siglog. 25 C. 911, 26 C. W. N. 642.

—a subscribing witness is not required to prove a document. 21 W. R. 429.

—handwriting may, in addition to the usual methods, be proved by circumstantial evidence under s. 67 which prescribes no particular kind of proof. 37 C. 467 : 14 C. W. N. 1114 (12 B. L. R. : Ap. 18, 21 W. R. 429, 11 B. 690) *Ref.*

—a document does not prove by itself, nor is an unproved signature proof of its having been written by the person whose signature it purports to bear. 26 C. W. N. 113.

—s. 67 makes proof of an execution of a document something more difficult than proof of any other matter. 1928 All. 303 : 107 I. C. 564.

—the ordinary modes of proving the execution is by calling some one who saw the executant write, or who knows his handwriting or by a comparison of his signature with his signature in other documents written by him. 59 I. C. 188.

—s. 67 does not always require the direct evidence of handwriting. It was also never intended by s. 60 either to exclude circumstantial evidence of a thing which could be seen, heard or felt. 48 C. L. J. 32 : 1928 Cal. 498, 111 I. C. 792.

S. 67. (Proof of signature and handwriting)—contd.:

—where the executant of a deed who is illiterate denies the execution and all the attesting witnesses are dead or for some other reason not available proof of handwriting of the attesting witness and of his identity is sufficient proof of execution. 1930 Mad. 770: 125 I. C. 231.

As to the method of proving the signature and handwriting, see ss. 45, 47 and 73 Evi. Act and sec. 90 which relates to document more than 30 years old.

S. 68 (Proof of execution of document required to be attested).

—the amendment of the sec. by Act XXXI of 1926 being a provision of procedural law and not substantive law has retrospective effect to its operation 1929 Mad. 881: 57 M. L. J. 588: 53 M. 119.

—under the amendment of the section by the Amending Act XXXI of 1926 no examination of the attesting witness to prove the execution of a registered document, not being a will, is necessary unless its execution is specifically denied by the alleged executant. 104 I. C. 622. 1927 Pat. 403.

—the acknowledgment of execution before the Sub-Registrar and the signature of the Sub-Registrar below the endorsement on the bond amount to sufficient attestation under the amended definition in act XXVII of 1926, 105 I. C. 422

—this sec. does not apply to the Punjab and there is no law requiring the sale deed of the province to be attested. 1929 Lah. 1: 114 I. C. 62: 10 Leh. 447.

—this s. applies only to cases where an instrument required by law to be attested bears the necessary attestation. 30 M. 251: 17 M. L. J. 213.

—a document executed in England when it is required to be attested but which is not required to be attested under the Indian Law and which relates to property in India, may be proved by only proving the signature of the executant. 7 Pat. 520: 111 I. C. 57: 1928 Pat. 304.

—to attest is to bear witness to a fact, and it is not necessary that the attesting witness should sign his name personally. 33 C. 861: 4 C. L. J. 41.

—an attesting witness is a person in whose presence the instrument is executed; 'presence' means mental cognition of the act and physical contiguity; a party to a deed cannot be regarded as an attesting witness. 11 C. L. J. 563: 5 I. C. 539: 37 C. 526.

—attestation means that what is said to be attested, happened in the presence of the attesting witness. 7 C. W. N. 160, 30 M. L. J. 463: 60 I. C. 554.

—a mortgage-deed is attested by witnesses within the meaning of s. 59 Tr. P. Act, only when they are present at the time of execution. 31 M. 215: 18 M. L. J. 219: 3 M. L. T. 300.

S. 68. (Proof of execution of document required to be attested)—*contd.*

—when the mortgagor not being able to sign his own name mortgage-deed was signed by the scribe on behalf of the mortgagor, the scribe was not competent to attest his own signature as attesting witness. 46 C. 522; 23 C. W. N. 290; 34 C. L. J. 498; 49 C. 438; 26 C. W. N. 951; 16 C. W. N. 1009; 35 M. 607 P. C. Ref. 34 C. L. J. 458.

—an attesting witness to a document is a witness in whose presence the document is executed. 34 C. L. J. 498; 49 C. 438.

—the writer may be an attesting witness. 48 C. 61.
when a scribe does not subscribe as a witness he is not an attesting witness. 20 C. W. N. 699 (Patna H. C. case). *Contra*, 5 C. W. N. 454, 204, 532.

—a person who saw the execution can be an attesting witness. 30 C. W. N. 585; 35 C. L. J. 409; 33 B. 44) Ref. (35 A. 458).

—person whose name was written by the scribe without a mark by the witness, is not an attesting witness. 38 A. 461.

—a document required by law to be attested cannot be admitted for legal purposes without being properly attested without objection its admissibility. 35 C. L. J. 473; 27 C. W. N. 1009; 33 B. 44) Ref. (35 A. 458).
L. J. 588.

—the mere fact that a document required to be attested was allowed to go at the trial without objection cannot take the place of proof of execution. 1917 Pat. 131; 101 I. C. 277; 8 Pat. L. T. 7.

—in the absence of death of witnesses, *prima facie* the presumption is that the mortgagor signed in the presence of the witnesses and that the latter subscribed in his presence. 38 C. L. J. 114.

—s. 68 is mandatory and is not controlled by s. 90. The mere fact that the only surviving attesting witness is considered to be hostile does not relieve the party from the duty of examining him as witness. Moreover all processes as mentioned in Or. 16 R. 10 C. P. C. must be exhausted; issuing summons and warrants only will not do. 31 C. W. N. 215; 98 I. C. 147; 1927 Cal. 102.

—where in a mortgage suit the only living attesting witness is summoned but he refuses and the plaintiff proceeds to prove the document by other evidence, the provisions of ss. 68 and 71 are complied with. 33 C. W. N. 248; 49 C. L. J. 16; 1929 Cal. 188; 116 I. C. 726.

—when all the attesting witnesses are dead the law would be satisfied by any evidence showing that the document was executed in the presence of two attesting witnesses. 14 L. W. 563; 23 M. 607.

—sworn evidence of an attesting witness in examination-in-chief can be acted upon by the court although the witness disproves

S. 68. (Proof of execution of document required to be attested)—contd.

the execution in cross-examination, being gained over by the opposite party. 1921 M. W. N. 747: 14 L. W. 344.

—an illiterate person cannot prove a mortgage deed. 1922 A. 232, 66 I. C. 557.

—evidence of attestors to mortgage-deed is indispensable unless it is impossible to produce them. 1925 All. 56.

—this section must be observed even in case of secondary evidence. 1925 All. 56, 82 I. C. 306.

—when an attesting witness denies having witnessed the execution, the party may adduce other oral evidence to show that the attester did as a matter of fact see the execution. 67 I. C. 87 (C).

operates as such unless it was presence of at least two witnesses 38 C. L. J. 114.

the execution but the other witnesses whose names are preceded by the writer's name prove the execution, it may be fairly presumed that both signed as attesting witnesses. 7 C. W. N. 384.

—where a mortgage-bond which ought to be attested by two witnesses, was attested by three, proof by one of such witnesses is sufficient proof. 29 C. 355: 6 C. W. N. 345.

—a mortgage bond was attested but not signed and then it was executed but there was no fresh attesting witness, in a suit where the mortgagor admitted the bond but pleaded only discharge it was held that it was not a valid mortgage and there was no question of admission or estoppel. 45 C. L. J. 577: 105 I. C. 28.

—an account book is not a document which is required by law to be attested. 51 A. 864: 1930 All. 38: 1930 Cr. C. 59: 31 Cr. L. J. 356: 121 I. C. 819.

S. 69. (Proof where no attesting witness is found.)

—to apply this section it must be proved that no attesting witness can be found, so all the processes including arrest of the witness and attachment of his property must be exhausted. 110 I. C. 756: 1928 Pat. 356: 7 Pat. 312.

—in case of mortgagor being illiterate, if all the attesting witnesses die, the document cannot be proved by a person who knows the handwriting of the attesting witness. 25 A. 365.

—death of attesting witness must be satisfactorily proved. 13 Bur. L. T. 114: 61 I. C. 637.

—when one attester is dead and the other either denies or does not recollect execution, it can be proved by other evidence. 1 Pat. 154: 1922 P. 415.

—in case of will, when attesting witnesses deny to prove, it may be proved by other evidence. 20 C. W. N. 192.

—the requirements of s. 69 are sufficiently complied with by proof of the handwriting of the scribe and by the fact that some

S. 69. (Proof where no attesting witness is found)—contd.

of the attesting witnesses signed by the pen of the scribe. 34 A. 615. 10 A. L. J. 217.

—where the only living attesting witness was got at by the opposite party and in cross-examination denied the clear evidence he gave in chief examination about execution and attestation, the evidence in chief examination was acted upon 1921 M. W. N. 747

S. 70. (Admission of execution by party to attested document.)

—s 70 relates to admission of a party in the course of trial of a suit. 27 C. 190.

—admission of representative of a party is not sufficient. 38 C. L. J. 114

—admission of execution but denial of attestation of a mortgage bond requires due proof of the document. 38 C. L. J. 114.

—no admission is effectual unless it amounts to an acknowledgment of the formal validity of the instrument. The execution means something more than mere signing by the party. It includes delivery and signing in the presence of witness. So where the mortgagor admits to have signed the mortgage deed but denies the presence of witnesses, attesting witness is required to prove the deed 27 C. W. N. 263 : 36 C. L. J. 373, *contra*. 24 Bom. L. R. 1296 ; 47 B 137.

—to be good signature attested by two witnesses within s. 59 T. P. Act, the persons signing as witnesses must be present at the execution of the instrument. Where such persons were not present at the execution of the deed but the *pardanashin* lady admitted that she had executed the mortgage deed, held that notwithstanding her admission the mortgage deed was void even as against her. The words of this sec. apply only to a document duly attested. 42 C. L. J. 148 : 30 C. W. N. 364 : 6 P. L. T. 575 : 1925 P. C. 203 : 89 I. C. 659 : 23 A. L. J. 815 : 49 M. L. J. 240 P. C.

—admission by the party does not dispense with the necessity of proof of attestation by two witnesses to make a mortgage bond valid. 7 C. W. N. 384 *contra*. 21 C. W. N. 24, 19 A. L. J. 855, 64 I. C. 11 : 44 A. 127 : 1922 A. 153.

—where there was clear admission in the written statement but the attesting witness stated that the executant did not sign the deed in his presence, the document must be taken to have been proved. 94 I. C. 558 : 1926 Pat. 295.

—but where there was no proper attestation of execution of a mortgage deed admission of the mortgagor did not dispense with the proof of the execution by the application of sec. 70. 45 C. L. J. 577 : 105 I. C. 28.

where the deft. stated in his written statement that he executed the mortgage bond but did so under a misrepresentation as to the contents *J. Mitter* held it was sufficient proof of execution while *J. Jack* held that the admission not being clear are unqualified ; did not apply though it was an important piece of ...

S. 70. (Admission of execution by party to attested document)—*contd.*

proof of execution there being no specific allegation of fraud. 19 C. L. J. 347; 1929 Cal. 441; 122 I. C. 554.

—admission by some executant is not effective against others. 2 Pat. 217; 74 I. C. 150, 24 C. L. J. 175; 20 O. W. N. 1044; 7 C. W. N. 384. *Dist.*

—when a mortgage deed is not admissible in evidence as such for want of attesting witness, it may be enforced as simple money bond. 4 C. L. J. 310. *but see* 35 C. L. J. 473 *above*

—co-executant who is also the scribe, cannot attest execution by others. 14 O. W. N. 1046, *contra*, 2 Pat. L. T. 614; 63 I. C. 266.

—a markman can be attesting witness within the meaning of sec. 59 of the Tr. P. Act, and sec. 68 of the Ev. Act. 2 O. W. N. 603.

—attestation under sec. 59 of the Tr. P. Act cannot be the attestation of the admission of having signed the document. So a Registrar before whom the mortgagor acknowledges the execution of the deed, cannot be an attesting witness. 26 C. 78.

—'attestation' under sec. 59 of the Tr. P. Act, is the attestation of the execution of the document and not of the admission of execution. 26 C. 246; 3 C. W. N. 84; 27 C. 190.

—where the attesting witnesses signed their names before the mortgagor, the bond was invalid. 32 C. 729; 9 C. W. N. 697.

—the question of attestation is a question of fact. 26 C. 78.

—the term 'admission' in sec. 70 of the E. Act, relates only to the admission of party in the course of the trial of a suit, and not to attestation of a document by the admission of the executant. 27 C. 190

—'signing' means the writing of the name of a person which may convey a distinct idea to somebody else, whereas 'mark' is a mere symbol and does not convey any idea to a person who noticed it, often even to the maker of it. 25 C. 911; 2 C. W. N. 642.

—the use of pen and ink is not necessary for signing. 25 C. 911, 26 C. W. N. 642.

S. 71. (Proof when attesting witness denies the execution.)

—where the only living attesting witness was illiterate and denied execution, other evidence could be given. 26 I. C. 500.

—a statement of the attesting witnesses that they signed the blank paper was sufficient to attract the operation of s. 71 and entitled the tender of other evidence. 48 I. C. 624.

—other oral evidence is admissible to show that the attester

44 I. C. 555.

—where two out of four attesting witnesses are dead, the third turns hostile and the fourth though summoned refuses to depose s. 71 is attracted and the mortgage bond can be proved by other evidence. 1929 Cal. 441; 49 C. L. J. 347; 122 I. C. 554.

S. 72. (Proof of document not required to be attested.)

—where the attesting witnesses to the deed of sale are alive their testimony is not the only evidence by which it can be established, it may be proved by any other evidence. 23 W. R. 293.

—when the genuineness of a receipt is sworn to by the person by whom rent was paid it was legally sufficient to prove the receipt without examining the writer of it. 1925 Cal. 452; 82 I. C. 974

S. 73 (Comparison of signature, writing or seal.)

—the comparison may be made by the court. 26 C. W. N. 113; 34 C. L. J. 373 1914 M. W. N. 240; 22 I. C. 627.

—the writing to be compared with the standard must purport to have been written by the same person, that is to say, the writing itself must state or indicate that it was written by the person. 14 C. W. N. 114; 37 C. 467.

—any document alleged by the party to be in the handwriting of a particular person may for purposes of proof be compared with other writing or signature admitted or proved. 35 M. L. J. 608 48 I. C. 68, (37 C. 467 *Diss.*, 14 Bom. L. R. 310 *Approved.*)

—ordinary methods of proving handwriting are; (1) by the admission of the person concerned; (2) by calling the writer or one who saw it written or one who is qualified to express an opinion as to the handwriting under s. 47, (3) by comparison of handwriting as provided by s. 73: but the last mode is always hazardous and inconclusive. 14 C. W. N. 114; 37 C. 467; 26 C. W. N. 113; 34 C. L. J. 373; 64 I. C. 234, 66 I. C. 773, 14 I. C. 741; 11 M. L. T. 424, 21 W. R. 429, 11 B. 690, 21 W. R. 436, 22 W. R. 272.

—comparison of the signature to a 'book with a document not before the court or with one whose authenticity is disputed is illegal. 1 Mad. H. C. 164

—the court could not properly make comparison of signature, taking for a standard a signature on a deed sought to be set aside as spurious. 9 W. R. 440.

—finding of forgery based on a comparison of handwriting and not on any evidence was disapproved. 10 W. R. 16; 8 B. L. R. 490, P. C.

—the court may make a party write for the express purpose of comparison, but in such cases comparison may feign or alter the ordinary view of defeating a comparison. 28.

—question of comparison of signature is distinct from question of admissibility. 1926 Cal. 139; 92 I. C. 442; 53 Cal. 372; 27 Cr. L. J. 266.

—to prove the handwriting of a person to a particular document a party may ask the court to have the handwriting of that person to be taken in court for the purpose of comparison. 42 C. L. J. 504.

S. 73. (Comparison of signature, writing or seal) — *Contd.*

—but this sec. does not empower the court to direct thumb impression to be taken of an accused in a criminal case. 68 I. C. 958 *contra.*, 83 I. C. 668 : 1924 Rang. 115 F. B., 6 Pat. 623, 1 Pat. 242, 106 I. C. 212 : 1928 Pat. 103.

—the court can direct the accused to make thumb impression for the purpose of comparison and if the accused refuses to comply with the order the court can draw an adverse inference. 6 Pat. 623 : 1 Pat. 242, 1 Rang. 758 : 83 I. C. 668 : 1924 Rang. 115, F. B. *Ref.*

Ss. 74-89. (Public and private documents and certified copies, —presumption).

—a document prepared by a public servant in the discharge of his official function is a public document. The mere fact of a document being kept in the public office does not lead to the presumption that it is public document. 107 I. C. 618 : 1928 Lab. 640.

—every person has a right to inspect a public document subject to certain exceptions, provided, he shows that he is individually interested in them. 8 O. W. N. 125 : 31 O. 284, 20 M. 189.

—records of the proceedings of a Municipal Board are public documents and the officer who is authorised to give copies of such documents is a public officer. 19 A. 293 F. B.

—departmental inquiry by a Magistrate in his executive capacity is not judicial enquiry and the statements recorded in such enquiry not being evidence on oath the statements are not public documents and a 163 can be applied therein. 1930 Cal 370 : 1930 Cr. C. 634.

—Loan Register of the Public Debt Office in the Bank of Bengal is a public document. 8 O. W. N. 125 : 31 O. 284.

—in one case the certified copy of plaint was admitted in
as a public document. 10 B. L.
: 92 I. C. 184.

C. is a public document. 18 O.

11. 11. 111.

—the Quinquennial Register is a public document. 7 W. R. 14.

—registers kept under the Land Registration Act are public documents. 2 Pat. 839.

—certified copies of death Registers are admissible. 46 C. 152, 41 M. 26.

—certificate of sale granted by court is not public document, 2 Bom L. R. 233.

—an anumoti-patra is not a public document. 14 O. 436 : 14 I. A. 71, P. C.

—income-tax papers are not public documents. 23 O. 950 P. C.

—Census register is not public document. 6 Bom. L. R. 535.

—Collector's Register made for the purpose of Govt. Revenue is not public document. 37 B. 513.

—Govt. measurement chittas of private lands are not public documents. 7 O. 76, 741.

Sa. 74-89. (Public and private documents and certified copies,—presumption)—*confd.*

—Chitta made by Govt. for revenue purpose, is public document and for private purpose is private document. 19 C. W. N. 1015 p. 1016, 19 C. W. N. 1038, 15 C. W. N. 313.

—partition Chitta distributing Govt. Revenue is a public document and its copy is admissible 15 C. W. N. 313.

—certified copy of Peshwa Court is public document. 19 C. W. N. 1068

—Chitta prepared by Govt. of lands escheated to it is not a public document. 17 C. W. N. 131, (13 C. L. J. 293, 16 C. 186, 7 C. W. N. 849), *fol.*

—Registers giving details as to areas of villages and the Govt. Revenue chargeable thereon at the time of the Settlement from the Collectorate are public documents. 15 C. L. J. 191.

—maps prepared by Collector is not a public document. 14 C. L. J. 578 16 C. W. N. 317.

—*Handsard's* Report are not admissible for the purpose of proving what was said in the House of Commons without the evidence of the person who made the report, or of any person who was present when the speech was made. 37 C. 760 : 14 C. W. N. 713.

—pp. circular issued by Director General of Posts and Telegrams as to the use of a certain kind of stamps is not an "act" or "record of act" of a public officer. 30 Cr. L. J. 483 : 113 I. C. 309 : 1929 M. W. N. 193.

—a crop-cutting report prepared by the collector in a proceeding under s. 40 B. T. Act is a public document. 102 I. C. 391 : 1927 Pat. 167 : 8 Pat. L. T. 74, 7 Pat. L. T. 671 : 93 I. C. 966 : 126 Pat. 436.

—*Dakalnamah* is a public document and its copy is admissible. 1927 All. 52 : 6 L. R. 383

—deposition of witnesses taken by an officer of the Court is a public document. 101 I. C. 289 : 1927 Pat. 61 : 8 Pat. L. T. 310 : 5 Pat. 777, 2 C. L. J. 218, 4 C. W. N. 429 : 27 C. 639 : 27 I. A. 1 P. C.

—P. C. the statement

... the age of a person

... evidence was very

... Act does not deal

... comment but simply

... proof by raising the

presumption that everything in connection with them had been legally and correctly done. 33 C. W. N. 1121 : 30 C. L. J. 106 : 119 I. C. 193 : 1929 Cal. 617 : 1929 Cr. C. 228 F. B.

—a school master is an "executive officer of Govt. within a 74 cl. (i) (iii). 50 B. 716 : 1927 Bom. II : 99 I. G. 307.

—certified copy of a plaint is not admissible in proof of the document. 7 Pat. L. T. 267 : 92 W. R. 437, 10 B. L. R. Ap. 31.

... for compromise with an order

... A. L. J. 369.

Ss. 74-89. (Public and private documents and certified copies.—presumption)—contd.

—if a person is proved to be the publisher of a newspaper then under s. 81 there is a presumption that what purports to be a newspaper of a particular name is that paper and that every copy of it was issued by the publisher of that paper. The presumption under s. 81 does not include a presumption that it was printed and published by the person by whom it purports to be. 36 M. 457.

—there is a presumption under s. 81 of the genuineness of the news paper actually produced. 1930 Lah. 371; 120 I. C. 798; 31 Cr. L. J. 168; 1930 Cr. C. 331.

—a Government notification cannot be proved by extract from newspaper, 1930 A. L. J. 1535, 1931 Cr. C. 12, a copy of the Government Gazette should be produced. 1931 Cr. C. 12.

—the text of an Act as published in the Gazette must be taken to be the authorised text of the Act. 97 I. C. 316; 1927 Pat. 142.

—Rennall's map was made some 22 years or so before the Decennial Settlement. There is a presumption of its accuracy under a 83 Evi. Act. 34 C. L. J. 205; 66 I. O. 287; 15 C. L. J. 281.

—maps and surveys made in India for revenue purposes are official documents prepared by competent persons, and with such publicity and notice to persons interested as to be admissible and valuable evidence of the state of things at the time they are made. But they are not conclusive and may be shown to be wrong, but in the absence of evidence to the contrary they may be judicially received in evidence as correct when made. 30 C. 291; 7 C. W. N. 193; 5 Bom. L. R. P. C. (19 W. R. 127, 11 C. 784, 16 C. 186, 22 C. 252 Ref 7 C. W. N. 849 p. 851, 13 C. L. J. 293; 15 C. W. N. 706, 41 I. O. 247, 2 I. C. 513, 15 C. W. N. 706, 4 C. W. N. 113, 6 C. W. N. 629; 13 Cr. L. J. 625

—that statements have evidentiary value and are admissible in evidence unless they deal with matter altogether outside the scope of the survey. 56 C. 813; 49 C. L. J. 112; 113 I. C. 465; 33 C. W. N. 289; 1929 P. O. 50.

—evidentiary value of the Thak map may be affected by the condition of the land being jungly at the time of the survey. 15 C. W. N. 887; 14 C. L. J. 319; 13 Bom. L. R. 896, 16 C. W. N. 317.

—a map prepared by private arrangement by a Dy. Collr. for settlement of the settled bed of a river does not come under s. 83. 19 I. C. 572.

—chittas prepared by Govt. in connection with resumption proceedings are not evidence against private person. 1926 Cal. 189; 98 I. C. 85.

—s. 83 does not deal with the admissibility of private maps. It may be admissible otherwise. 17 C. L. J. 642; 16 I. O. 747, 9 C. W. N. 111.

—the word "accurate" in this section means accuracy as to drawing and correctness of the measurements i. e. accuracy with regard to the drawing of the map. 25 W. R. 179, 18 C. 224, P. C. 7 C. W. N. 612, 10 I. O. 653; 9 M. L. T. 415.

Ss. 74-89. (Public and private documents and certified copies—presumption) contd.

—objection to the want of proof of the accuracy of a map may be waived 9 C. W. N. 111

—where an application is made for letters of administration with a copy of the will annexed under a document purporting to be a power of attorney and to have been executed before and authenticated by a Notary Public, an affidavit of identification as to the person purporting to make the power-of-attorney being the person named therein is unnecessary. 33 C. 625; 9 C. W. N. 986.

—post marks on letters are *prima facie* evidence as to the time, dates and places mentioned. 20 C. L. J. 455.

—the words "diplomatic agent" in clause (6) of sec. 78 are very wide and *prima facie* cover the Resident of Hyderabad who is the Political Agent of the Govt. of India. 50 B. 716; 1927 B. 11.

—the court may presume the genuineness of a signature which authenticates a copy 51 M. 453; 33 C. W. N. 578; 49 C. L. J. 566. 31 Bom. L. R. 756; 117 I. C. 507; 1929 P. C. 115; 1929 M. W. N. 553 P. C.

S. 90. (Presumption as to documents thirty years old.)

J 380. 81 I. C. 493.

—where a document, more than 30 years old, is free from suspicion of dishonesty, it may be admitted in evidence without proof. 18 W. R. 485, 1921 Pat. 49; 5 Pat. L. J. 563; 57 I. C. 786.

—the a. itself admits a presumption of the genuineness of a document 30 years old, if produced from legitimate custody. 5 Bom. L. R. 144

—what is proper custody is to be determined on the facts of the particular case. 126 I. C. 19.

—a private partition chitta purporting to be more than 30 years old was produced by the person who deposed that the Record Office had produced it in court, held that the presumption could not be raised as the chitta was not in the Collectorate before production nor did the proof establish that the Collectorate custody was proper custody within a. 90. 90 I. C. 722; 1926 Cal. 370.

—production of a will and an *anumatipatra* by the Collector of the District with whom the properties were placed on behalf of the Court of Wards after 54 years, gave rise to the presumption under this a. 4 Pat. 67; 1925 Pat. 442; 94 I. C. 814.

—the presumption under this section must always be applied with a good deal of caution. 31 C. W. N. 215; 98 I. C. 147; 1927 Cal. 102; 55 C. 210.

S. 90. (Presumption as to documents thirty years old)—*contd.*

—the rule under this s. as to proof of execution of documents thirty years old ought to be applied with special care and caution. 11 C. 539, 29 C. 740, 20 B. 1, 41 M. L. J. 310: 1921 M. W. N. 750: 61 I. C. 959.

—under this s. the court is not bound to presume the genuineness of a document 30 years old, it should exercise its discretion as to whether in the circumstances the presumption of genuineness should be applied to it. If it is not satisfied, it should call upon the party to produce evidence of its execution. 17 C. W. N. 108, 95 I. C. 261: 1926 All 537, 104 I. C. 219: 1927 Cal. 870, 2 C. L. J. 592, 31 Bom. L. R. 1279, but the discretion should not be arbitrarily exercised. 29 C. 740.

—the court cannot presume the correctness or genuineness of every statement made in the document, all that it can presume is that a document was executed by the person who purported to be the executant. 98 I. C. 1021: 1927 Cal. 229.

—the court may presume the genuineness of signature which authenticates a copy. 33 C. W. N. 578: 1929 P. C. 115: 52 M. 453: 1929 M. W. N. 553: 117 I. C. 507: 49 C. L. J. 566 P. C.

—there is no presumption under this sec. with regard to unsigned account not purporting to be in the handwriting of any particular person. 1930 Nag. 225: 124 I. C. 609, 33 M. L. J. 84 fol.

—where the courts in India refused to admit a document of more than 30 years old without formal proof, the Privy Council did not interfere. 9 C. W. N. 103: 31 I. A. 217: 25 A. 581: 6 Bom. L. R. 750, P. C., 80 C. L. J. 23: 3 U. P. L. R. 9: 61 I. C. 125.

—when a document of great age creating *miras* tenure, cannot be proved for want of witness, it is necessary, in order to establish its authenticity, to show that it was accompanied by possession. 2 W. R. 22 P. C., but it is not necessary to go behind the possession of the present owner. 11 W. R. 35, P. C., 4 W. R. 73 P. C., 13 W. R. 109, 17 W. R. 34.

—effect of the presumption under this s. may be weakened by circumstances which tend to raise doubt as to its authenticity. 7 C. L. J. 615, 95 I. C. 261: 1926 All. 537.

—jama wahi baki papers of more than seventy years old is sufficient to raise the presumption of fixity of rent under s. 50 B. T. Act. 45 C. L. J. 129.

—in reckoning 30 years, not the date of filing but the date on which it is tendered in evidence, is to be considered. 5 C. L. R. 135, 1925 Mad. 184.

—presumption applies also to true copies coming from proper custody. 46 M. 92, 16 L. W. 839, 1922 M. W. N. 614: 31 M. L. T. 347: 16 L. W. 462, 32 M. L. T. 89, 1929 Oudh 483: 121 I. C. 273.

—the presumption does not go to the extent of holding that the documents were in fact executed by persons possessed of requisite authority. 27 C. W. N. 964.

S. 90. (Presumption as to documents thirty years old)—
contd.

—when the document is signed by agent, authority must be proved. 3 C 557, 6 C. 209

—the s does not
another. 50 C 526 : 192

—It only presume
agent which must be
I C 220 (C), *contra*, 97

—when the signature of the executant purports to be made by scribe, authority of the latter is presumed. 47 A. 31, 83 I. O. 5 : 1925 All. 1 F. B.

—the court may presume that the party who signed for the executant signed it with an authority from him. 1927 All. 765.

—when attesting witnesses of a will thirty years old are dead a copy of the will is admissible and there is presumption of due attestation when a witness, who was present at the execution of the will, deposes. 33 C. L. J 332; 63 I. C. 518.

—a deed of gift 30 years old but not bearing any signature of the executent except a mark, is not admissible in evidence. 60 I. C. 96

—secondary evidence of the contents of document, shown to have been lost in proper custody and to be more than 30 years old is admissible under ss. 65 (c) and 90 without proof of execution. 5 C. 886 ; 6 C. L. R. 199 ; 22 A. 294.

- of a document thirty
proved to have been
118 I. C. 154, 16 C. 753

—where a party relies upon the certified copy of a document before any presumption under a. 90 can be made as to its genuineness it is incumbent on him to lay the foundation by leading secondary evidence under s 65, 1930 A.H. 550: 1930-A.L. J. 1003: 125 I. C. 460, (22 A. 294, 41 A. 592, 6 C. 720, 14 C. 486 P. C.) *fol.*

—private copy must be proved to have been compared with the original. 1923 M. W. N. 454; 1922 M. 674; 73 I. C. 66.

—when the adverse party is in possession of the original and he does not and will not produce it a certified copy of it will go in evidence under this s. 21 B. 528.

—but where the original is in existence and is not produced or its non-production is not satisfactorily accounted for, a copy of it will not be admissible under this s. 25 M. 674.

—proper custody should be liberally construed. 11 B. 94.

—the mere fact of certain document having been produced from a court where it had been filed does not necessarily bring that document within the requirements of s. 90 Evi. Act. 4 Pat. 67: 1925 Pat. 412, 5 O. 918.

—when the lower court does not draw the presumption, under s. 90 the appellate court is justified in refusing to apply the presumption. 108 I. O. 412, (M).

S. 91. (Exclusion of oral by documentary evidence).

—having regard to the terms of sec. 91 the court is to find out the real contract between the parties. 109 I. C. 18: 1928 Mad. 459.

—although the original contract is made orally as soon as it is reduced to writing no parol evidence is admissible to prove it. 111 I. C. 677: 1928 Mad. 546.

—an agreement to refer to arbitration is not a contract, grant or other disposition of property, consequently s. 91 does not apply to it. 1929 All. 415: 116 I. C. 853.

—where written documents exist they shall be produced as being the best evidence of their contracts. 7 I. A. 8: 19 W. R. 210 P. C.

—oral evidence of transaction reduced to document is not admissible. 20 G. W. N. 162.

—but when a written mortgage was alleged but not proved circumstantial evidence to prove the mortgage was allowed. 52 B. 875: 115 I. C. 379: 1928 Bom. 484: 30 Bom. L. R. 1277.

—although a wakf may be created orally, once a dedication has been made by writing the document itself or a secondary evidence of the same should be produced. 1929 Pat. 410: 8 Pat. 481: 117 I. C. 638.

—this sec. is uncompromising When a *hundi* is inadmissible for being found to be insufficiently stamped the creditor cannot fall back upon the original transaction and sue on the basis of a loan. 3 Lah. L. J. 157: 3 U. P. L. R. 50: 60 I. C. 107, 2 Lah. 330: 66 I. C. 201, 61 P. R. 1888: 42 P. R. 1895, 95 I. C. 704, *contra*. 1923 A. 529, 95 I. C. 847: 1926 Bom. 357: 28 Bom. L. R. 631, 104 I. C. 470: 1927 Nag. 241.

—debt covered by pro-note cannot be proved by independent prior agreement where pro-note is inadmissible for want of stamp. 85 I. C. 389: 1925 Mad. 351.

—but the mere fact that a bill of exchange or a *hundi* has been executed does not necessarily mean that the whole of the contract has been reduced to the form of such document. 51 A. 530: 1929 All. 254: 116 I. C. 293: 27 A. L. J. 333.

not reduced to the form of a
evidence s. 91 does not ex-
whole contract which must
51 A. 530: 1929 All. 254:
8 A. 298, 34 A. 158, 7 A. L.
23 G. 851, 1921 Lah. 217)

Ref. —where in a suit upon a promissory note executed by the
a decree on
the finally,
of action.

under s. 163
referred to

S. 91. (Exclusion of oral by documentary evidence)—*contd.*
transaction which fell through. 30 C. W. N. 254, 1926 Cal. 705;
93 I. C. 115.

—an unregistered sale deed and partition deed can be used to prove the nature of possession of the person claiming under the deed. 28 Punj. L. R. 88; 93 I. C. 940, 10 Pat. L. T. 449; 1929 Pat. 620; 122 I. C. 533.

—oral evidence regarding what took place at the time of the deed is inadmissible in evidence. 28 C. W. N. 73; 37 C. L. J. 440; 47 B. 335; 44 M. L. J. 608; 71 I. C. 763 P. C.

—where the terms of the contract have been reduced to writing no oral evidence is admissible to prove that the document was not to take effect forthwith as mentioned in the document. 1930 A. L. J. 1066

—oral evidence of the acts and conduct of parties, such as that possession remained with the vendor, notwithstanding the execution of a deed of out and out sale, is admissible to prove that the deed was intended to operate only as a mortgage. 25 C. 603, 2 C. W. N. 562, F. B. Contra, 28 C. 70, 25 M. 7, 22 A. 149; 27 L. A. 58 P. C., 27 A. 612.

—evidence of conduct e.g. return of the lease, is admissible to prove that such return was due to an intention to render the deed inoperative. 26 C. 160.

—evidence of subsequent conduct is inadmissible to construe a document unless the terms of the deed are ambiguous. 25 C. W. N. 308, 33 C. L. J. 577, 74 I. C. 1030, 1925 Pat. 128

—when terms are ambiguous, the subsequent conduct of the parties is admissible for the purpose of interpretation. 29 C. W. N. 166; 40 C. L. J. 322; 1925 Cal. 346; 84 I. C. 478.

—evidence of conduct of parties was admissible to prove that the stipulation was never intended to be acted upon from the very beginning. 27 C. W. N. 336, 25 C. 603; 2 C. W. N. 562 F. B., 28 C. 256, 28 C. 289; 5 C. W. N. 326, 20 C. W. N. 347, 680 Ref. 27 L. A. 58; 22 A. 149; 4 C. W. N. 153, Dist., 10 Pat. L. T. 669; 1929 Pat. 717.

—subsequent conduct of the parties can be admitted to show alteration of original tenancy. 1925 Cal. 340.

—the acts and conducts of the parties can only be proof either (1) of a contemporaneous oral agreement varying the terms of the registered contract, or (2) of a subsequent oral agreement having the same effect. In the former case the evidence is excluded by s. 92 and in the latter case by proviso 4 to that sec. 12 C. L. J. 439, 24 C. 20, 25 C. 603, 28 C. 256, *expl.* 22 M. 261 Fd.

—oral evidence of acts and conduct of parties is admissible to show that an ostensible conveyance is in reality a mortgage by conditional sale. 28 C. 256; 5 C. W. N. 351, 28 C. 289; 5 C. W. N. 326.

—conduct of the parties is admitted only after every other means to construe a deed has been exhausted. 108 I. C. 418; 1928 Pat. 225

—where property is purchased in the names of several persons jointly a joint tenancy is created but oral evidence may be given to

S. 91. (Exclusion of oral by documentary evidence)—*contd*

—where the joint tenants have become tenants-in-common 1929

is a registered
difference in
496, 38 M.
C. W. N. 521

P. C. 10 C. L. J. 27, 37, C. L. J. 552: 75 I. C. 557: 1923 Cal. 570, 45 A.
679, 38 M. 514, 1930 Mad. 659 1930 M. W. N. 156.

—evidence to show that the price of the property was less
than the amount recited in the sale deed is inadmissible. 1923 A.
429: 71 I. C. 769

—a party cannot be allowed to prove that he has violated
the law and committed a fraud upon the revenue of the country.
27 C. W. N. 496

—but the word "fraud" used in the Proviso is wide enough
to include fraud on the registration law, so a party can show
that an item of property was fictitiously inserted in. 1930
A. L. J. 926.

—this section has no reference to the interpretation of the
terms of the contract. Where the evidence to prove that the term
must be excluded under the sec.

—in construing the terms
parties is not admissible. 25 C
257 P. C., 28 C. 289 5 C. W. N. 326, but as between third persons
it is admissible. 22 C. W. N. 257 P. C. (4 C. W. N. 153: 27 I. A. 58
P. C., 25 M. 7, 30 B. 119) Dist 2 C. L. J. 838, 28 A. 473

—though oral evidence of intention of parties is inadmissible
evidence regarding the attendant circumstance is admissible. 1929
Mad. 807, (1924 P. C. 226, 1925 P. C. 75) fol. (22 A. 149, 1927 P. C. 207)
Ref.

—where there is a mutual mistake of fact, the court will
interfere to have the deed rectified, so that the real intention of the
parties may be carried into effect 2 C. W. N. 260, L. R. 4 A. 302

—oral evidence is admissible to prove that what purports to
be a deed of sale is really a deed of gift. 15 C. W. N. 521 P. C.
(28 C. 70, 27 A. 612), *reversed*, 117 I. C. 907: 1929 Leb. 875.

—where a deed is so form a sale deed, evidence of the
surrounding circumstances is not admissible to prove that it was
intended to operate as a mortgage. 49 B. 662. 27 Bom. L. R. 951:
1925 Bom. 501.

—oral evidence was allowed to prove that a village not
included in a patni lease was intended by the parties to be included
in it. 8 W. R. 152.

—oral evidence is admissible as to negotiations antecedent to
execution of a mortgage showing the nature of interest in the
property mortgaged. 24 C. W. N. 36: 34 C. L. J. 256.

—to a suit for pre-emption the vendee can prove that the
document was not a sale deed. 21 A. L. J. 932.

S. 91. (Exclusion of oral by documentary evidence)—contd]

—a substituted contract may be looked to. 1913 Rang. 102: 74 I. C. 154

—in India a contract of sale of goods can be proved by parol evidence. Where the bought and sold notes in a contract of sale happen to be falsified by the vendor the aggrieved purchaser is entitled to disregard them and prove his contract by other and antecedent materials. 31 C. 614: 31 I. A. 122: 8 C. W. N. 489: 6 B. L. R. 498, P. C.

—when a party to a deed is permitted to go into oral evidence, the other party can rebut it by oral evidence. 8 C. W. N. 158.

—the rule . . . not bar strangers to a deed from . . . real nature of the transaction. 2 C. . .

S. 92. (Exclusion of evidence of oral agreement.)

—N. S. s. 92 is supplementary to s. 91. If the contract, grant or disposition has been reduced into writings, s. 91 says, no evidence shall be given of it, except the document itself, and this rule would be in vain, unless, as is said in s. 92, it was also forbidden to contradict, vary, add to, or subtract from its terms. Mark Ev. P. 73

—the distinction between ss. 91, 92 and ss. 93 to 99 is, that ss. 91 and 92 define the cases in which documents are exclusive evidence of the transactions which they embody, while ss. 93 to 99 deal with the interpretation of documents by oral evidence. The two subjects are so closely connected together, that they are not usually treated as distinct but they are so in fact. Step. Dig. 7th Ed. P. 192.

—the rule in s. 92 is taken almost verbatim from Taylor on evidence, including the exceptions, 6 C. 328. But the admissibility of oral evidence to vary the terms of a written document &c. is not governed by the English law but by this Act. 8 C. W. N. 101, 27 I. A. 58: 22 A. 149, P. C.

—a decree does not come within s. 92. The section refers to only what are known as "dispositive documents" and the words "or any matter required by law to be reduced to the form of a document" must be read in that sense. 91 I. C. 705: 1926 Cal. 643.

—when there is a proposal in writing for a contract to be entered into at a later date it is doubtful if oral evidence of terms not to be found in the written proposal, is admissible. 32 C. 96: 9 C. W. N. 147: 31 I. A. 188 P. C., 15 S. L. R. 180: 67 I. C. 19.

—the sec. does not apply where the parties did not intend that the writing should contain the whole agreement between them. 14 W. R. 319, 17 C. 173 n, nor does it bar the admissibility of oral evidence as to some items of an agreement while others have been reduced into writing in letters between the parties. 13 C. W. N. 326.

—this sec. which bars any oral agreement applies only as between the parties to the document or their representatives in interest. 1930 A. L. J. 724.

S. 92. (Exclusion of evidence of oral agreement)—*contd.*

—this sec. applies only to transactions *inter partes* and does not bar an inquiry at the instance of third person whether the parties intended certain item to be transferred by the sale deed. 1930 A. L. J. 926

—the rule of exclusion of oral evidence does not bar strangers to a deed from proving by oral evidence the real nature of the transaction. 2 C. L. J. 338, 21 A. L. J. 932.

—s. 92 does not apply to third parties. 45 C. 320 : 22 C. W. N. 257 P. C. 15 C. W. N. 958 : 14 C. L. J. 276 P. C.

—the sec. does not prevent proof of fraudulent dealing with third person's property or proof of notice that the property purporting to be absolutely conveyed in fact belonged to a third person not a party to the conveyance. 1929 Rang. 86 : 114 I. C. 676 : 6 Rang. 741.

—s. 82 does not apply to a criminal case where the Crown is the prosecutor, but where a private person is the prosecutor, he being a party, the section applies. 8 I. C. 932. 11 Cr. L. J. 738.

—where at the time of the sale by the Govt. of a certain estate some portion of it were submerged under water and where in the sale notification the area of the estate was specified as certain number of bighas, held that the latter fact did not preclude the purchaser from claiming any accretion to the estate. 29 C. W. N. 166 : 84 I. C. 478, 2 C. L. J. 39, 19 W. R. 69, 24 W. R. 91 *dist.* 32 C. L. J. 402, 21 W. R. 115 *Fol.*

—evidence is admissible as to the respective shares of the parties in a purchase as to which the deed is silent. 101 I. C. 653 : 38 M. L. T. 247 : 1927 M. W. N. 168, 10 A. 421, 1927 Mad. 1102, 1930 Mad. 590

—evidence is admissible to prove identity of persons when the word 'others' is used. 42 M. L. J. 475 : 1922 M. W. N. 185 : 1922 M. 100. 30 M. L. T. 177 : 65 I. C. 973

—evidence of oral agreement substituting a new executory contract is admissible. 44 A. 258 69 I. C. 990.

—previous correspondence may be looked at for the identification of land. 1923 A. 53 : 69 I. C. 647.

—mistake can be proved in a document under this sec. when a property is left out through clerical mistake. 1930 All. 887, 1927 All. 355 *Ref.*

—reference to the earlier deed of mortgage is permissible for the identification of property. 44 A. 246.

—antecedent documents may be consulted only for identifying land and not to contradict the terms of the settlement made. 88 I. C. 103 : 41 C. L. J. 386 : 3 Pat. L. R. 114 : 27 Bom. L. R. 819 : 48 M. L. J. 611 P. C.

—in the case of a registered mortgage deed, oral evidence cannot be let in that the property really meant as security is other than what appears in the deed. 90 I. C. 841.

—where Govt. lands are sold in auction with the specification of certain area in the sale notification, purchaser can claim

S. 92. (Exclusion of evidence of oral agreement)—Contd.

accrual. 29 C. W. N. 166; 84 I. C. 478; 40 C. L. J. 322; 1925 Cal. 346.

—the admissibility of an oral agreement contemporaneous with a written document will depend to some extent upon the way in which the case is presented. 29 C. W. N. 670; 88 I. C. 435; 1925 Cal. 860.

—s. 92 merely prescribes a rule of evidence, it does not fetter the court's power to arrive at the true meaning and effect of a transaction, in the light of all the surrounding circumstances. 3 Pat. L. R. 227; 27 Bom. L. R. 787; 86 I. C. 332 P. C.

—when an agreement varying the written contract is admitted by both parties, s. 92 does not affect. 24 C. 20.

—s. 92 has no application where there is no variation of contract. 21 B. 609; 2 Bom. L. R. 422.

—evidence may be allowed to prove the inaccuracy of the terms of the contract. 49 M. L. J. 414; 22 L. W. 848; 1926 Mad. 35, (22 A. 370 P. C., 36 A. 537) fol. 33 A. 340 P. C. Ref.

—evidence of different contract is admissible. 84 I. C. 124; 1925 Cal. 94.

—evidence negating the written agreement is admissible. 90 I. C. 929.

—It is permissible to adduce evidence of a contemporaneous oral agreement under which parties to the written contract agreed that until the happening of a certain event no obligation whatever under the written agreement should attach. 52 C. 677, 1925 Cal. 1007; 90 I. C. 59.

—oral evidence to prove modification on a registered kabulyat is not admissible. 12 C. L. J. 442.

—a contemporaneous oral agreement cannot be proved to show that the rent is less than what was stated in the registered kabulyat. 6 C. W. N. 60; but evidence may be given to show that the kabulyat was never intended to be acted upon or that the tenant has been paying less rent at lower rate. 6 C. W. N. 242, 2 I. C. 160, 10 C. L. J. 740.

—subsequent agreement relinquishing a portion of the rent as stated in the kabulyat is not admissible. 56 C. 201; 116 I. C. 733; 1929 Cal. 437.

—the statement of law in Amir Ali's Evidence Act that 'evidence to the effect that there was not an agreement at all is admissible' is too wide and must be qualified by the express provisions 1 to 3 to s. 92, 49 A. 680; 1927 All. 422; 100 I. C. 1029.

—when evidence of contemporaneous oral agreement may be given. 63 I. C. 368, 19 A. L. J. 816; 63 I. C. 861, 44 A. 421; 20 A. L. J. 247.

—evidence of subsequent or contemporaneous oral agreement not to charge compound interest is inadmissible to vary the original contract which is a registered one. 1924 Cal. 380, 1925 Cal. 276.

—subsequent oral agreement relinquishing a portion of rent in violation of the terms of a kabulyat is not admissible. 56 C. 201.

S. 92. (Exclusion of evidence of oral agreement)—*contd.*

—a subsequent oral agreement to take less than what is due under the mortgage bond is an agreement modifying the terms of the contract and is admissible 9 Lsh. 597; 1928 Lah. 873; 110 I. C. 424.

—where a document is formally drawn up evidence to prove contemporaneous oral agreement is not admissible. 1923 Cal. 402; 70 I. C. 790

—oral evidence to show that the contractor was agent only is not admissible. 23 Bom. L. R. 767; 63 I. C. 452, or surety only. 1923 Rang. 15; 70 I. C. 872.

—no evidence should be allowed to vary the voting papers. 32 C. L. J. 124; 60 I. C. 547.

—where the partition deed was inadmissible for being unstamped and unregistered no oral evidence was admissible. 20 A. L. J. 777; 1922 A. 493 and 1926 M. W. N. 45 *but see cases under "admissibility."*

—oral agreement forming a condition precedent to the attaching of any obligation is admissible in evidence. 6 N. L. J. 21; 1923 Nag. 135; 71 I. C. 477, 25 Bom. L. R. 867; 1924 Bom. 44.

—agreement splitting up liability in a mortgage deed varying the terms cannot be proved 25 C. L. J. 24; 21 C. W. N. 740.

—evidence showing that two documents executed and registered on the same date are parts and parcels of the same transaction does not amount to leading evidence so as to vary the terms of the document. 25 A. L. J. 723; 103 I. C. 399; 1927 All. 696, 33 A. 340, *Rel on.*

—where a deed of purchase stands in the name of two persons, oral evidence is admissible to show that only one of them was the real purchaser. 10 A. 421; 8 A. W. N. 27.

—where the terms of a bond are clear and unambiguous, oral evidence is not admissible to show that it was an assignment of future rent. 4 C. L. J. 402.

—the instances given in proviso (1) of s. 92, are not exhaustive but only illustrative. So a party can adduce parol evidence to prove that the transaction was not a genuine mercantile one but really in the nature of a wagering one. 32 C. 437; 1 C. L. J. 155; 9 C. W. N. 305 F. B. *overrules* 9 C. 91, 29 C. 461; 28 I. A. 239; 5 C. W. N. 714 P. C., *Ref* 17, 31. 480.

—oral evidence is admissible to prove a discharge and satisfaction 44 C. L. J. N. 371; 1926 193; 1930 All. 97 I. C. 162;

—the discharge of a mortgage bond partly by payment and partly by the release of the debt by the mortgagee cannot be proved by oral evidence. 42 C. L. J. 582; 30 C. W. N. 371.

—an oral agreement to take less than what is due under a registered mortgage bond is inadmissible; but oral evidence

S. 92. (Exclusion of evidence of oral agreement)—contd.

to discharge on receipt of a smaller sum than that due is admissible. 1929 Mad. 794; 30 L. W. 293; 53 M. 127; 122 I. C. 641.

—an oral promise by mortgagee to extend time of payment is inadmissible, 1930 All 1193; 1930 All 721 F. B.

—subsequent oral agreement that the mortgagee agreed to accept a smaller sum ^{modification of} the original contract 92 (4), 1929 All. 615; 119 I. C. 107; 597; 1928 Lah.

873; 119 I. C. 424; 30 L. W. 46; 144 I. C. 436; 1930 Nag. 235.

—oral agreement that profits should be taken in lieu of interest is not admissible, 1930 All 440; 122 I. C. 894.

—where a sale deed is for cash consideration proof of a contemporaneous oral agreement that it was to take effect as maintenance arrangement is not allowed, 1930 Mad. 547; 1930 M. W. N. 129.

—oral evidence of discharge of a promissory note is admissible. 92 I. C. 393.

—to decide whether a sale deed is a sale or a mortgage. 4 C. W. N. 192.

—evidence of contemporaneous oral agreement that the parties agreed to treat a sale deed as mortgage deed is admissible. 25 Bom. L. R. 818; 1924 Bom. 58.

—that s. 92 refers to terms of the document and not statement of facts therein. So notwithstanding the admission of receipt of endorsement can prove that no consideration. W. N. 485; 22 A. 370. 27 I. A. 93; C. L. J. 27; I. C. 953, or that the t. 5 C. W. N. 158 (11 C 480, 3 B. 4 A. L. J. 41, 45 A. 679).

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—oral evidence cannot be given to show that one of the executants of the hand-note was only surety. 8 C. W. N. 101, contra. 3 C. 174, 92 I. C. 667.

—whether interest is payable per mensem or per annum under a promissory note as to which it is silent, cannot be proved by oral evidence. 4 Pat. L. T. 577.

—where a promissory note is silent, as to interest, a verbal agreement, made subsequent to the execution of the note to pay interest, may be proved. 12 O. L. R. 163, but extrinsic evidence as to contemporaneous oral agreement to pay interest cannot be proved 8 C. W. N. 1260.

S. 92. (Exclusion of evidence of oral agreement)—*contd.*

—when a document is silent, oral evidence cannot be given to show that interest was payable *not per year but per month*. 18 C. W. N. 592, 14 C. W. N. 1100 not fol

—where a promissory note is payable on demand an agreement providing for a different mode of satisfaction is inadmissible. 63 I. C. 748, 45 B. 1135 23 Bom. L. R. 488 : 63 I. C. 673, 90 I. C. 378.

—a person is not entitled to adduce oral evidence of a condition by which he says it was agreed to postpone the enforcement of a promissory note. 90 I. C. 1020: 1925 M. W. N. 601: 1925 Mad 1240

—the terms and purposes of a promissory note may be proved by oral evidence. 13 Bur. L. T. 239; 64 I. C. 33.

—when parties depart from original written agreement it is incumbent on the party insisting on such substituted verbal agreement, to show that both the parties were proceeding on a new understanding. 33 C. L. J. 577

—agreement that money due on a promissory note was not to be paid or demanded until settlement of accounts, is inadmissible.
44 A. 521; 20 A. L. J. 315.

—oral evidence as to the composition between debtor and creditor of a hundi is admissible. 1929 Sind 153 114 I C 97

—misdescription of property cannot bar oral evidence being given to identify. 1 Pat. L. R. 80; 71 L. C. 689.

—when a hatchitta upon which the snit is brought is silent as to interest nral evidence may be given to prove verbal agreement to pay interest. 90 L. R. 301, 62 l. C. 315, or of prevailing custom. 62 l. C. 315

—oral evidence may be given as to how the interest was to be paid. 7 A. W. N. 61.

—oral agreement not contradicting the terms of the promise.
sory note is admissible. 10 C. W. N. 713 P. C.

—an oral agreement may be proved to the effect that the terms of the document were not enforceable until the happening of certain event. 25 C. 401: 2 O W N. 188.

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—the view that there has been introduced into the law of India such a radical change in the law of evidence as would have the effect of including from the class of mortgagee many transactions which before the Evl. Act. would have been held to be within that Act, is not correct. 40 C. L. J. 491; 82 I. C. 993; 47 M. 729 P. C.

—where the mortgage deed provides for compound interest oral evidence cannot be given to prove that there was contemporaneous agreement to realize only simple interest., 78 I. C. 742 : 1925 Cal. 276, 1924 Cal. 380, 27 A. L. J. 866 : 119 I. C. 92.

S. 92. (Exclusion of evidence of oral agreement)—*contd.*

—oral evidence is admissible to prove an agreement between the mortgagee and the would be purchaser of equity of redemption as regards the terms of which the mortgagee would release or assign his interest. 40 C. L. J. 67: 1925 Cal. 94.

—where the vendor proves non-passing of consideration the purchaser may prove that the amount as stated in the sale deed was higher than the amount settled. 24 I. C. 661.

—an agreement, the terms of which are not inconsistent with those of the lease, is not affected by this sec. 6 C. W. N. 865: 12 M. L. J. 479: 29 I. A. 138: 25 M. 603 P. C.

—where there is a registered partition deed, oral agreement of the right of access to another's land is not admissible. 28 N. 495: 15 M. L. J. 255.

—no writing is necessary in this country for surrendering a tenancy but when the original lease is registered, the surrender of a portion with an abatement of rent can only be effected by a registered instrument and oral evidence of surrender is admissible. 63 I. C. 483 (C).

—where there is a written lease, no evidence of custom is admissible. 48 C. 339: 25 C. W. N. 13: 61 I. C. 503.

—question as to admissibility of evidence should be determined as they arise, instead of admitting the evidence in the first instance and reserving the question of law as to its admissibility until final judgment. 25 C. 401: 2 C. W. N. 188, 17 C. 173 *fol.*

—objection to the admissibility of a document may be taken at any time, even after it has gone in evidence but the method of proving it cannot be questioned after proof. 9 C. W. N. 111, 23 C. 335, *Dist.*

Ss. 93-98. (Admissibility of oral evidence to interpret documents.)

—extrinsic evidence is not admissible to alter a written contract, or to show that its meaning is different from what its words import. 7 W. R. 144

—sec. 94 does not prevent a party to a document from proving that both the parties were under a mistake of fact as to the contents of the document. 1930 Lah. 446: 122 I. C. 493.

—sec. 94 does not apply. 104 I. C. 736.
—if defective, no evidence
1925 All. 34.

—ss. 93 and 94 contain important exceptions to the general rule contained in s. 91, 30 M. 397.

—extrinsic evidence may be given to show that the survey numbers stated in the sale deed are wrong, and land actually sold are of different survey numbers 30 M. 397.

—extrinsic evidence may be given to explain the ordinary meaning of expression in a compromise-decree. 62 I. C. 702 (C).

—various words in written documents which *prima facie* present no ambiguity may be interpreted by extrinsic evidence of usage. 34 C. L. J. 160, 63 I. C. 139.

Ss. 93-98. (Admissibility of oral evidence to interpret documents)—*contd.*

—extrinsic evidence is admissible to resolve latent ambiguity. 36 C. L. J. 242 : 1923 Cal. 32 : 72 I. C. 696, 26 C. W. N. 901 : 35 C. L. J. 87 : 64 I. C. 824.

—terms being ordinarily ambiguous, extrinsic evidence of usage is admissible. 26 C. W. N. 1022, 64 I. C. 693.

—when the lands leased out cannot be identified correspondence preceding the lease is admissible. 20 A. L. J. 907 : L. R. 3 A. 623.

—where a testator bequeathed certain property, saying 'A and B, my natural sons' whereas their legitimacy was in dispute, the misdescription was immaterial. 20 M. 167 : 22 M. 383, P. C.

—where the bond is silent as to whether interest is payable monthly or annually evidence can be allowed to show that the rate of interest is payable monthly. 1930 Lah. 111 : 121 I. C. 75 : 30 Pnnj. L. R. 741.

—where land within certain boundaries is sold, and wrong area is given, it is regarded as misdescription only. 30 M. 397, 16 W. R. 5 P. C., 14 W. R. 301, 5 B. 208.

S. 99. (Who may give evidence of agreement varying terms of document).

—persons who are not parties to document are competent to adduce oral evidence to show that the rights of parties to it are at variance with the rights ostensibly created and declared by the document. 53 I. C. 243.

—in a mortgage suit the mortgagor and his representatives are estopped from denying the interest described in the document, but third persons can question the mortgagor's title. 96 I. C. 26 : 1926 Mad. 744 : 1926 Af. W. N. 939.

—s. 92 does not apply to third parties. 45 C. 320 : 22 C. W. N. 257 P. C., 15 C. W. N. 958 : 14 C. L. J. 276, P. C.

—persons not claiming through the settlor can challenge the validity of a waqf on the ground that it was merely illusory. 1928 Cal. 253, 32 M. L. J. 431 *fol.*, 10 C. W. N. 449 *Dist and Exptd*

Ss. 101 to 108. (Burden of proof of fact or knowledge)

ty to discharge the burden of
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claimant must first prove his
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s on those persons who
11 C. W. N. 417 : 5 C. L.
9 B. L. R. 597 : 29 A.

247, P. C.

—but there is no presumption in Hindu Law that transactions standing in the name of the wife are the husband's transactions. 2 C. W. N. 367, 8 C. 545 : 11 C. L. R. 41, reversed on facts by 13 C. 181, P. C., 17 M. L. J. 339.

Ss. 101 to 106. (Burden of proof of fact or knowledge)—contd.

—in case of boundary disputes the plff. is to prove his right to recover. 10 M. I. A. 81 : 3 W. R. 19 P. C., 10 C. L. R. 169, 13 M. I. A. 59 P. C., 8 W. R. 209.

—but when the boundary line passes through waste land onus is on both sides as if they are counter claimants. 21 C. 504 : 21 I. A. 39 P. C., 11 C. W. N. 330 p. 234, 65 I. C. 743, 27 C. L. J. 599, but the onus may be shifted on one party when the other party is given possession of the property by the Magistrate, 23 C. W. N. 592, 29 C. 187 : 6 C. W. N. 386, P. C.

—when the deft. proves the non-payment of the consideration of a bond in cash as stated therein, onus of proving the passing of consideration otherwise than in cash is on the plff. 4 C. W. N. 82 P. C.

—when a stranger contests the mortgage security, onus is on the mortgagee. 6 C. L. J. 659 : 3 M. L. T. 38 (6 C. 268, 17 A. 428, 5 C. W. N. 403, 5 C. L. J. 653) *Ref.* 3 C. W. N. 324, *Diss*

—non-mentioning of the mortgage-deed in the income-tax returns submitted by the plff. does not shift onus as to non-passing of consideration on him. 23 C. 950 : 23 I. A. 92, P. C.

—trespasser, who seeks to maintain possession against the purchaser cannot plead that the deed of purchase is voidable at the option of the vendor : he must show that it is absolutely void. 9 C. W. N. 477.

—denial of receipt of consideration by the executant before the registering officer does not shift the onus on the plff. 27 A. 71.

—when the execution of a mortgage deed is admitted, onus to prove the falsity of the recitals as to payment of consideration is on the executant, 6 C. L. J. 659. It is otherwise when a stranger contests, *same case*

—debtor must prove that the person to whom he made the payment was authorised by the creditor to receive payment. 28 Bom. L. R. 1391 P. C.

—the party setting up the illegality of contract is to prove that. 1 C. L. J. 261, 10 Bom. L. R. 1004.

—in a mortgage suit against bona fide purchaser for value, the burden of proof lies on the plff. 6 C. 268 : 7 C. L. R. 6, 5 C. W. N. 403, 24 C. 62, *Dist.*

—a person suing another for fraud must prove it, he is not relieved from the obligation by the fact that the deft. has told an untrue story. 21 C. 921.

—living as husband and wife may dispense with the proof of marriage. 17 C. W. N. 494, 38 C. 700.

—the legal presumption is that a child born to wife is husband's offspring, so the person alleging illegitimacy must rebut it. 2 C. L. J. 218.

—the person who impeaches a registered deed on the ground that the registering officer has no jurisdiction to register the document owing to non existence of some property, must prove his case. 31 C. 146.

Ss. 101 to 106.. (Burden of proof of fact or knowledge)—contd.:

—the onus of showing that a document duly executed and registered was antedated, lies on the person who alleges it. 1925 M. W. N. 632. 85 L. C. 582; 49 M. L. J. 252.

—contents of a document cannot be proved inferentially. 17
C. W. N. 531.

—no debate on the question of burden of proof arises when the entire evidence on both sides is once before the court. 27 C. W. N. 328, 25 C. W. N. 485; 47 I. A 76 P. C., 87 I. C. 565; 1925 Cal 1262.

~~the debate as to whether or not~~ —when the entire evidence on both sides is before the court
W. N. 328, 45 " " " " J. 196, 27 C.
~~for the court~~ :hat remains 36 C. L. J.

—when both the parties have adduced evidence and the relevant facts are before the court the question of burden of proof becomes immaterial and importance should not be attached to the question on whom the initial onus lay. The question of burden of proof arises only where there is no evidence one way or the other. 27 C. W. N. 245; 37 C. L. J. 199 P. C., 34 C. L. J. 333, 529, 563, 27 C. W. N. 134; 35 C. L. J. 473; 1922 Cal. 160, 45 M 586. 31 M. L. T. 54; 68 I. C. 538 P. C., 1929 Cal. 325.

—the whole evidence being gone into onus becomes immaterial.
47 C. 1027; 38 C. L. J. 72, 34 C. L. J. 333, 529, 563, 56 C. 805; 33 C.
W. N. 227; 1929 Cal. 325.

—wrong placing of onus is immaterial provided no party is prejudiced. 52 C. 121; 84 I. C. 693; 1925 Cal. 61.

—the burden of proof as to the knowledges of true facts is on the mortgagor and not on the mortgagee. 27 C. W. N 943.

—onus of proving as to the exact time of death of the person who has not been heard for seven years is on the person who intends to extend the time of death. 1 Pat. 475.

—the person alleging that a certain person died before another must prove the fact affirmatively. 88 I. C. 249; 1925 M. W. N. 232; 1925 Md. 1005.

—the question upon which party the onus of proving a fact lies is a question of law. 65 L. C. 745.

—the deft. who has admitted liability by affixing thumb marks to an entry is to prove the circumstance to absolve from the liability. 3 Lab. L. J. 417.

—the appellant is to show that the judgment is unsustainable.
25 C. W. N. 868, 26 C. W. N. 322, 35 C. J. J. 116.

—in case of claim preferred by the wife of the insolvent to the property attached by the Receiver, the Receiver is to prove that the property belongs to the insolvent. In such a case ordinary rule does not apply. 19 A. L. J. 497; 63 I. C. 519.

—every apparent transaction must be presumed to be real until contrary is proved, 2 Pat. L. T. 728: 69 I. C. 611, 2 Pat. L. T. 658.

ss. 101 to 106. (Burden of proof of fact or knowledge)—contd.

—when there is an affidavit of the person serving the notice, the party impugning the fact must prove that there was no service. 1928 Cal. 722 : 117 I. C. 552.

—where in a suit the mortgage bond is alleged to be lost but the defendant denies the execution of the bond, debt's alternative plea of payment does not relieve the plaintiff from proving the loss of the deed in order to entitle him to use the copy of it. 49 A. 78 : 97 I. C. 82 : 1926 All. 741.

—recital in the document is sufficient proof of passing of consideration 38 O. L. J. 114 : 74 I. C. 178, 1923 C. 119, 1923 Pat. 20 : 70 I. C. 804, 3 Lnh L. J. 198 : 71 I. C. 783, 104 I. C. 173, 1925 Lah. 471 F. B., 1927 Lah. 272.

—if a court takes into consideration an admission in a deed to bind a party, the whole of the statement therein should be considered. 2 Pat. L. T. 658.

—the person alleging adverse possession must prove it. 35 O. L. J. 192 and under Art. 114 L. Act the onus of proving adverse possession is on the defendant. 36 C. L. J. 472.

—the person setting up adoption must prove it. 36 C. L. J. 434.

—the burden of proving that a transaction is a fraudulent and collusive one intended to defraud creditors and is merely benami, is upon the person who asserts it. 25 C. W. N. 409 : (1921) M. W. N. 80 : 62 I. C. 356 P. C.

—onus of benami is on the person who alleges it. 36 C. L. J. 396, 35 C. L. J. 589, 65 I. C. 701 (C), 28 C. W. N. 62, 4 Pat. L. T. 54, 72 I. C. 1003, 1922 Cal. 292.

—the burden of showing that the judgment appealed from is wrong is on the appellant 26 C. W. N. 322 : 35 C. L. J. 116 : 42 M. L. J. 253 : 1922 M. W. N. 93 : 3 Pat. L. T. 311 P. C., 65 I. C. 182 (C).

—ordinarily the burden of proving non-payment of consideration is on the vendor but where the purchaser cannot explain his being out of possession for a long time it shifts on the purchaser. 13 Bur. L. T. 112 : 61 I. C. 634.

—when a person executes a document as major a heavy burden lies upon him or his representative to prove the defence of minority. 47 C. L. J. 628 : 32 C. W. N. 874 : 109 I. C. 387 : 30 Bom. L. R. 1346 : 1928 P. C. 152.

—an executant pleading minority is to prove his minority. 8 O. L. J. 324 : 63 I. C. 525.

—non-executant minor members of a Hindu joint family are to prove that the transaction entered into by the adult members are not binding on them. 63 I. C. 258.

—the burden of proving that the executant of a document is a minor lies on the person alleging it. 47 A. 493 : 87 I. C. 445 : 1925 All. 681, 87 I. C. 778 : 1925 All. 399 : L. R. 6 All. 219.

—when a sale-deed has been once executed and registered it can only be avoided by a subsequent registered transfer. 43 I. A. 365 : 24 O. C. 272 P. C.

Ss. 101 to 106. (Burden of proof of fact or knowledge)—*contd.*

—plff. is to prove that he is preferential heir. 2 Pat. L. T. 97.

—where the law is incapable of enforcement, possession follows title. 2 Pat. L. T. 133 : 61 I. C. 78.

—a person who challenges the correctness of a Record of Rights must prove inaccuracy. 2 Pat. L. R. 87 : 87 I. C. 741 : 1925 Pat. 498, 88 I. C. 495 : 1935 Pat. 530 : 6 Pat. L. T. 805.

—person in a fiduciary character must prove good faith. 34 C. L. J. 529, 563.

—the fact that the onus has been wrongly placed becomes immaterial when it does not affect the decision on merits. 3 Lab. L. J. 445, 27 C. W. N. 134 : 35 C. L. J. 473, 34 C. L. J. 333, 529, 563.

—in a suit under Or. 21 r. 63, the burden of proof is on the plff., 2 Lab. L. J. 198, 60 I. C. 75, but where there is no decision in the claim case adverse to the claimant, this rule does not apply. 60 I. C. 751.

—when a deed is attacked after a long period the burden is on the person attacking it. 45 A. 581.

—a decision under s. 145 Cr. P. C. does not throw the burden of proving title on the loser. 1923 P. 401 : 71 I. C. 478.

—when encroachment is admitted, burden of proving extent is on the trespasser. 6 N. L. R. 59 : 71 I. C. 83.

—where the mortgagor admitted the execution and the receipt of consideration before the sub-registrar, the burden of proof of non-passing of consideration lay on the mortgagor. 14 L. W. 344 : (1921) M. W. N. 747, 2 Lab. 249 : 64 I. C. 901, 104 I. C. 173, 1925 Lab. 471 F. B., 1927 Lab. 272, 17 P. R. 1888 *Diss. from*.

—in the case of formally registered document in which receipt of consideration has been recited, the onus of non-passing of consideration is on the person alleging it, but in case of entry in an account book the onus is on the party alleging payment to prove it. 60 I. C. 730 : 68 I. C. 303.

—when the execution of a mortgage bond is admitted by the mortgagor or proved against him, onus is on him to prove that the recital as to the payment of consideration is false. 12 M. I. A. 292 P. C. *Ref.*, but when a stranger contests the claim the onus is on the mortgagee to prove his case. 6 C. 263 *Ref.* Either party to a document may show that there was no consideration passed or in reality it was different from what was recited. 34 C. L. J. 333, 27 C. W. N. 8 : 24 Bom. L. R. 675 : 29 A. L. J. 961 : 30 M. L. T. 132 P. C.

—the onus is heavily on the person who alleges that certain partition lists were not acted upon. 1928 Mad. 865 : 117 I. C. 720.

—in case of suit on a promissory note the plff. is to prove the identity of the person to whom the note was given, it being not a question of amount. 32 C. L. J. 132 : 62 I. C. 210.

—in a case between rival purchasers when the vendor admits receipt of consideration from the first purchaser, onus of its falsity is on the second purchaser. 68 I. C. 732.

Ss. 101 to 106. (Burden of proof of fact or knowledge)—contd.

—admission of signature on a document but not the execution does not shift the onus of proving the execution. This is specially so where the signature is put on blank paper. 20 A. L. J. 672 : 68 I. C. 809.

—when guardian sells property of a minor with the sanction of the Court, onus to prove want of necessity is on the minor. 42 M. L. J. 333.

—the meaning of the expression "proved" as defined in s. 3 is in no way affected by the incidence of the burden of proof. 50 C. 318.

—the onus is on the person setting up the will. 5 C. W. N. 895.

—but where the question was whether writing of the will took place before or after the testator took poison, the burden was held to rest on the party impugning the will. 21 A. 91 P. C.

—when the Zeminder sues for ejectment and the deft. sets up *Shikims* which is admitted or proved, the burden of proof as to whether the land is included within the *Shikims* is on the zeminder. 3 C. W. N. 763.

—in an ejectment suit, plff. must prove not only title but also possession within 12 years. 17 C. W. N. 389, P. C.

—in a suit for ejectment plff. must recover on the strength of his own title and cannot depend on the weakness of the adversary. 17 C. W. N. 669, P. C., 23 O. L. J. 151.

—where title of the plff. is proved or admitted the deft. is to prove his right to retain possession. 9 C. W. N. 144, 8 C. L. J. 170, *Ref.* 13 O. W. N. 661 *Dist.* 7 C. L. J. 553, 8 O. L. J. 170, 8 C. L. J. 513

—plff. is to prove that his land is *zrat* or *kashland*. 13 C. W. N. 66, 6 C. W. N. 105, 3 C. W. N. 703, 10 O. W. N. 434.

—in a suit for possession of land the plff. is to prove that the land is within his holding and it is not for the deft. to prove that it lies outside. 56 C. 805 : 33 C. W. N. 227 : 1919 Cal. 325, 3 C. W. N. 763, *Ref.*

—in a suit for ejectment the plff. is to first prove that land is within the ambit of his Zemindary and then the deft. is to prove his title to retain possession. 49 O. L. J. 546 : 1929 Cal. 459, 1922 P. C. 272 P. C. *fol.*

—tenant is to prove that his tenancy is : I. C. 319, 47 M. 337 P. C., 1930 M.
: prove his right to eject. 45 M. L.

—person resisting partition must prove the fact. 33 C. W. N. 734 : 1919 P. C. 156.

—when the deft. resists partition by setting up acquiescences in his permanent right in part of the land he must prove the right.

Se. 101 to 106. (Burden of proof of fact or knowledge)—*contd.*
 52 M. 549 : 31 Bom. L. R. 830 : 1929 M. W. N. 561 : 33 O. W. N. 734 :
 1929 M. W. N. 561 116 I. C. 601 P. C.

—states of things existing at the time of suit (as to standard of measurement in this case) may be presumed to have existed since the inception of the tenancy. 2 C. L. J. 125.

—If a letter properly directed is proved to have been posted, the presumption is that it reached its destination and was received by the person to whom it was addressed. 102 I. C. 821 : 1927 Pat. 305 8 Pat. L. T. 633.

—a person pleading certain exception, is bound to bring himself within it 15 C. 555.

—the accused is to prove that he made the defamatory statement in good faith and that he is entitled to plead exception 8 to s. 499 I. P. C., 102 I. C. 511 : 28 C. L. J. 575. 1927 Bom. 436 : 29 Bom. L. R. 713.

—letter when posted is presumed to have reached the person to whom it was addressed. 102 I. C. 821 : 1927 Pat. 305 : 8 Pat. L. T. 633.

—a person alleging marriage should prove it 5 C. L. J. 1 : 17 M. L. J. 50 : 9 Bom. L. R. 264 P. C.

—continued cohabitation with a woman of prostitute class will not give rise to the presumption of marriage. 28 C. L. J. 173 P. C.

—the onus of proving that any particular lands were included in the Permanent Settlement of 1793, is clearly on those who affirm that. 3 C. L. J. 316.

—the burden of proving waiver is on the person who alleges it. 11 C. W. N. 844 : 6 C. L. J. 62.

—It throws upon the accused the burden of proving the existence of circumstances which bring the case within any of the special as well as any of the general exceptions of the Penal Code. 4 C. 124 : 3 C. L. R. 122.

—it is upon the accused to prove the existence of facts and circumstances which would show that he is not liable to be convicted of the offence with which he is charged 32 A. 451 p. 453.

—a witness is not protected if he makes a defamatory statement, it lies upon him to show that his statement falls within one or other of the exceptions to s. 499 I. P. C., 29 A. 685.

—when all the circumstances went to show that the intention of the accused was to employ a certain girl as a prostitute as soon as she was physically ready for the purpose, under s. 106 Evl. Act, the burden lay on the accused to prove otherwise. 33 C. L. J. 451.

—when thefts occurred at different dates the presumption is that stolen articles passed from the thief to the receiver on different dates also, the accused is to prove otherwise. 96 I. C. 120 : 27 Cr. L. J. 872.

Ss. 107 & 108. (Burden of proof of death.)

—ss. 107 and 108 relate to the question whether a man is alive or dead. 23 B. 296.

—there is a presumption in favour of continuance of life and it is for the person asserting death, to prove it. 64 I. C. 468: 22 Bom. L. R. 771, 1 Lab. 554.

—these secs. refer to a man being alive or dead at the time when the question is raised and not as to the time of the death. 35 C. 25: 5 C. L. J. 649: 11 C. W. N. 883: 8 A. 614, 23 B. 296. 11 C. L. J. 580, 6 I. C. 244, 1923 Bom. 208: 69 I. C. 835, 47 B. 451, 100 I. C. 446: 1927 Nag. 101, 100 I. C. 833: 1927 Lab. 284.

—it is on the person, who alleges that the person was dead at some antecedent time to prove that fact by evidence. 35 C. 25: 5 C. L. J. 649: 11 C. W. N. 883, 14 C. W. N. 311: 11 C. L. J. 138: 37 C. 103, 1 Pat. 475: 3 Pat. L. T. 352.

—under s. 108 there may be a presumption as regards death
34 A. 36: 37 M. 440, 41 M. L. T.
43 A. 673, L. R. 6 All. 227, 43 C.
W. N. 721: 93 I. C. 280: 5 Pat. 312:
6: 43 C. L. J. 578: 97 I. C. 247, where

a party states that a certain person died on or before a particular date that fact has to be established by positive evidence. 1930 All. 427: 123 I. C. 759: 1930 A. L. J. 469.

—onus of proving that the death took place at any particular time within seven years lies upon the person who asserts it. 30 C. W. N. 721: 43 C. L. J. 249: 24 A. L. J. 105: 93 I. C. 280: 5 Pat. 312: 1926 M. W. N. 203 P. C., 54 C. 186: 43 C. L. J. 578: 97 I. C. 247: 1926 Cal. 1036, the presumption is only that the person unheard of for seven years is dead at the time of dispute and there is no presumption that he died after the expiry of seven years from the time when he was last heard of. 115 I. C. 626.

—the rule of Mahomedan Law that missing person is to be regarded as alive for ninety years from the date of birth is superseded by s. 108, 7 A. 297 F. B., 43 A. 673, 19 A. L. J. 713: 63 I. C. 286 so also the rule of Hindu Law that at least 12 years should elapse before a man unheard of should be treated as dead, is inapplicable on the face of the a., 32 M. L. T. 6, 1923 M. W. N. 49: 71 I. C. 305, 1 A. 53 F. B., 8 A. 614.

—a person who claims under Mahomedan Law a share in the property of his grand-father, must show, either by establishing a presumption under s. 108, or by actual evidence, that the death of his father took place at the date subsequent to that of the deceased owner. 33 C. 173: 32 I. A. 177: 10 C. W. N. 33: 2 C. L. J. 236 P. C., 19 A. L. J. 713: 63 I. C. 286: 7 A. 297: 11 A. L. J. 355: 19 A. L. J. 713: 63 I. C. 286.

—there are two possible alternative courses which might be utilised in a case where one has to face an unexplained disappearance of a person about whose death nothing is known. One might be that if the circumstances were such as would justify a prudent person in coming to a conclusion that the death was extremely

Ss. 107 & 108. (Burden of proof of death)—*contd.*

probable, an application might be made to the proper court upon affidavit showing the circumstance and asking leave to presume the death, or in the alternative if the court did not think that the evidence produced before it was not sufficient upon which it could prudently be said that death could be presumed, then, in such cases, the Court could and should appoint some person to look after the affairs of the individual who has disappeared until his death can properly be presumed. 3 Pat. L. R. 43: 86 I. C. 358: 4 Pat. 378. 1925 Pat. 369.

—s. 108 provides that under circumstances a rebuttable presumption of law arises as to the death of a person: from this it does not follow that if these circumstances do not exist there can be no presumption of fact under s. 114 Evl. Act 103 I. C. 329: 1927 All. 697

S. 109. (Burden of proof as to relationship of partners, landlord and tenant, and principal and agent).

—when it is proved that the person in possession before the defendant was a tenant, it is for the defendant to show when the relationship ceased and possession became adverse. 28 M. L. J. 361: 27 I. C. 804.

—relationship of landlord and tenant continues until it is proved to have ceased. 36 M. 53.

—mere non-payment of rent does not put an end to the relationship of landlord and tenant 4 C. 314, 3 M. 118, 17 B. 736, 26 B. 410, 7 C. L. J. 202 6 C. L. J. 72.

—when a tenant holds over after the expiration of the terms of the tenancy it is considered to be a new tenancy. 65 I. C. 589.

—when a tenant holds over, he does so on the terms of the expired lease unless new stipulation is made. 2 C. W. N. 303, 6 C. W. N. 589, 9 C. W. N. 108n, 28 C. 227, 16 C. W. N. 496, 14 C. W. N. 56n.

S. 110. (Burden of proof as to ownership.)

—person in possession is presumed to be owner. 103 I. C. 36.

—though s. 110 recognise a presumption that the person in possession also has a good title, there is no corresponding section which says that the person with title should be presumed to be in possession 1923 Bom. 361.

—when evidence of possession is equally strong, presumption will be that the possession goes with the title 27 C. W. N. 305: 36 C. L. J. 396, 36 C. L. J. 12 C. W. N. 1095: 8 C. L. J. 436 P. C., 15 C. L. J. 1.

—where evidence of possession is conflicting and not conclusive on either side, the presumption that possession goes with title must prevail 12 C. 38, 8 C. W. N. 876, 19 C. 661 P. C., 5 C. L. J. 71, 10 C. L. J. 527, 31 M. 528, 13 C. L. J. 625, 36 C. L. J. 396, 27 C. 25.

—prior peaceful possession is *prima facie* evidence of ownership against another who has no title to the land in dispute. 118 I. C. 680.

S. 111. (Proof of good faith in transactions).

—the relation between the parties must be such as to suggest a special influence or control. The mere relation of a daughter to mother in itself suggests nothing in the way of special influence or control. 33 C. 773 : 10 C. W. N. 570 : 3 C. L. J. 484 : 3 A. L. J. 353 : 8 Bom. L. R. 379 P. C.

—cases of fiduciary relationship between legal practitioner and client; 7 W. R. 99, 12 C. 225, 23 C. 805, 15 M. 389, 16 C. W. N. 649, 19 C. W. N. 162 : 23 L. O. 642, P. C., 22 C. W. N. 491, between Principal and Agent. 25 A. 358, 23 A. W. N. 70, 18 C. 545 P. C., 31 B. 271 : 8 Bom. L. R. 652, 10 L. O. 57 : 10 M. L. T. 313, between guardian and ward. 30 M. 169 : 17 M. L. J. 19 : 2 M. L. T. 4 F. B., between husband and wife 20 A. 447 : 11 M. I. A. 551 P. C., 9 W. R. 153, between spiritual advisor and disciple. 12 A. 523 : 16 C. W. N. 649.

—only by proof of the relation of parties having been such that the one naturally relied upon the other for advice and the other was in a position to dominate the will of the first, *undue influence* is not established. It must be further shown that the person in a position of domination has used the position to obtain unfair advantage for himself so as to cause injury to the person relying upon his authority or aid. 1929 Lah. 309 : 30 P. C. L. R. 288 : 10 Lah. 761 : 116 I. C. 899, 1920 P. C., 65 fol.

—where a fiduciary relationship existed *undue influence* is presumed to have existed until the contrary is proved. 34 C. L. J. 529, 563, 10 W. R. 128.

—where a party relies on a deed executed by a Parsi lady he must prove that it was the free and intelligent act of the lady. 95 I. C. 506 : 1929 Nag. 414.

S. 112. (Birth during marriage is conclusive proof of legitimacy).

—before presumption of legitimacy arises all the facts specified in the sec. should be proved. 1923 Nag. 43, 68 I. C. 465.

—claimant must prove legitimacy. 44 A. 470.

—the burden is shifted by showing that the son has been acknowledged by his parents to be their son and that he has been accepted as such by repute and for 40 years. 102 I. C. 713 : 1927 Mad. 733.

—the words "no access" seem to include impotency and the other physical incompetency. 18 B. 458 : impotency is equivalent to non-access. 26 I. C. 996. What is impotency. 24 C. W. N. 914.

—non-access must be proved by cogent evidence. 39 I. C. 29 : 56 P. W. R. 1917.

—the burden of ———— who disputes the paternity of a ———— the serious illness of the husband ———— child must have been begotten ———— presumption arising under this ———— 7 C. W. N. 617. 25 A. 403 P. C.

S. 112. (Birth during marriage is conclusive proof of legitimacy)—*contd*

—birth during continuance of the marriage gives rise to the presumption of legitimacy 7 Lah. L. J. 184: 90 I. C. 123: 1925 Lah. 414 1925 Mad. 426.

—where a child was born during the continuance of the second marriage the first husband dying 279 days before the birth of the child the presumption under this section is that the second husband was the father of the child. This section refers to the point of time of the birth as the deciding factor and not to the time of conception of that child. 1926 Lah. 529: 27 Punj. L. R. 531: 8 Lah. L. J. 247

—as to the validity of marriage and legitimacy challenged on the ground of insanity of husband 38 C. 700.

—there may be presumption of legitimacy on the ground of likeness between father and son. 19 C. W. N. 103n.

—where a person claims to be the son of a deceased person, he must prove that he was born within 280 days after the death of his father. 29 C. 111 6 C. W. N. 146: 4 Bom. L. R. 243 P. C., 7 Bom. L. R. 93, 7 C. W. N. 617 P. C.

—under s. 112, presumption is that a child born within 280 days after possibility of access is legitimate. It is not that such a child was conceived 280 days before its birth. 27 M. L. J. 58, 8 M. 89 Ref.

—a child born nine months after the death of the father was, on consideration of the evidence held to be legitimate. 1930 P. C. 139 123 I. C. 550: 58 M. L. J. 708. P. C.

—where a boy was born about 7 months after marriage and it was not disputed that the father had no opportunity of access the child was held to be legitimate. 26 I. C. 969.

—where a son was born to a wife after 419 days from the death of her husband the period of gestation was so extraordinarily unusual that it rebutted all assertion of mother's chastity. 1930 Lah. 97: 120 I. C. 495.

—difference between legitimacy and legitimation by acknowledgement. 26 C. W. N. 81 P. C.

—the law presumes in favour of marriage and against concubinage when a man and woman have co-habited continuously. 15 I. C. 328 63 I. C. 387: 2 Leb. 207, 60 I. C. 375.

—where there is *prima facie* evidence of co habitation as man and wife and a long course of treatment as wife the presumption of marriage can be rebutted only by evidence of clearest character. 15 C. L. J. 621: 45 C. 878 P. C.

—in England the declaration of a father or mother cannot be admitted to bastardise the issue born after the marriage but the Evl. Act does not contain any such rule. 95 I. C. 834: 1926 348: 28 Bom. L. R. 607.

S. 114. (Court may presume existence of certain facts).

—before a presumption under s 114 as regards receiving stolen property can arise it *must be proved* that the goods found in the possession of the accused have been stolen. The presumption cannot arise when it *may reasonably be presumed* that the property is stolen one. 52 O 223 : 1925 O. 666 : 88 I. C. 515, 54 B. 171 : 1930 Cr. C. 479 : 1930 Bom. 155 : 32 Bom. L. R. 98.

—no time limit can be laid down to ascertain whether possession of articles is recent or otherwise. If few stolen articles be found in possession of a person under the probability of being honestly received, some after the theft, the presumption under the law will not arise. 94 I. C. 361 : 27 Cr. L. J. 617 : 1926 Cal. 925.

—the mere fact that the accused person points out the place where stolen property is concealed does not give rise to any presumption of his guilt, but the presumption will arise when he cannot account for the possession of such stolen property. 1930 Bom. 244 : 32 Bom. L. R. 574.

—in a criminal case the onus is on the prosecution to prove the guilt beyond doubt and the burden never changes. 52 C. 223, 24 C. W. N. 619 *Ref.*

—it is unsafe to base a conviction on the uncorroborated testimony of an accomplice. 44 C. L. J. 216 : 1927 Cal. 63.

—nothing can be presumed which offends legal principle 16 C. W. N. 418.

—presumption should not be made against but in favour of the existing state of things. 30 C. W. N. 745 : 53 C. 533 : 24 A. L. J. 761 : 94 I. C. 974 : 1926 P. C. 41.

—this sec. does not go so far as to enable the court to presume that a certain state of things existed in the past without any proof from the party. 52 C. L. J. 235.

—the presumption under this sec. relates to the existence of the certain facts and not to their probative value. 44 C. L. J. 265 : 1927 Cal. 49.

—inconsistent pleas and pleas raised but not proved indicate falsity of defence. 33 C. W. N. 430 : 27 A. L. J. 261 : 1929 P. C. 95.

—the presumption is that a Hindu family is joint in food, worship and estate. 12 M. I. A. 523 P. C., 3 M. I. A. 229 P. C., 10 M. I. A. 403 and that the family once joint retains its position as such. 11 M. I. A. 369, P. C.

—the presumption that all property including acquisitions made in the name of individual members, is joint family property, does not apply to a case governed by the *Dayabhaga* law. 31 C. 448.

—the presumption is that acquisition of property by a member is joint family property. 14 M. I. A. 412 : 13 M. I. A. 333, P. C.

—presumption as to acquisition by Hindu widow with the profits of her husband's property is that it is her own property. 23 M. 351, 20 I. A. 12 P. C., (10 C. 324), *Ref.*

S. 114. (Court may presume existence of certain facts)—*contd.*

—there is no presumption when one co-parcener separates from others, that the latter remain united (*Mitakshara*), 30 C 725 : 7 C. W. N. 642 : 5 B. L. R. 469, 30 I. A. 130 P. C.

—the mere fact that the mortgagor is in possession of the mortgage deed does not prove that the mortgagee is a benamdar. 1923 Bom. 429.

—the inference of continuance whether back wards or forwards whether upwards or downwards, is an inference of fact and may therefore be rebutted. 1923 Cal. 247 : 72 I. C. 849 : 36 C. L. J. 339.

—signature by sheristadar in the writ of attachment "by order" of the Court should be presumed to be regularly done until the contrary is proved. 27 C. W. N. 1042 : 37 C. L. J. 331.

—the posting of a letter if not returned raises the presumption that it reached the addressee. 45 M. L. J. 817 : 33 M. L. T. 217, 8 Pat. L. T. 633 : 102 I. O. 821 : 1927 Pat. 305

—ghee can be presumed to be meant for human consumption. It is not a presumption of law but a supposition based on common sense. 49 C. L. J. 502 : 1919 Cal. 283 : 121 I. C. 561 : 31 Cr. L. J. 280.

—where the evidence on both sides is balanced the presumption is that the younger survived the elder. 1922 Bom. 347.

—where there are two conflicting statements of a witness by one of which he stands to gain a sum while by the other he stands to lose a bigger sum the latter statement should ordinarily be preferred. 1930 Pat. 293.

—when an appellate judgment is silent on a point the presumption is that it was given up. 68 I. C. 740.

—possession of one member of a Hindu joint family is proof of possession of the family. 11 B. L. R. 193.

—if an immovable property is in the name of his son, it is presumed to be the property of the son. 13 M. I. A. 232 P. C.

—when a Hindu family is joint and a nucleus exists, the onus is on the party setting up separate property. 18 C. L. J. 548, 5 C. L. J. 338 : 11 C. W. N. 478, P. C.

—when a property stands in the name of a junior Hindu member and no separate fund is proved the presumption is that the father acquired the property in the name of the son. 18 C. W. N. 428 P. C.

—there is no presumption that debt contracted by the manager of the Hindu family was contracted for the benefit of the family. 34 A. 126, 135.

—suspicion though a ground for a scrutiny cannot be made ground for presumption. 16 C. L. J. 629, 21 C. W. N. 585 P. C., 27 Bom. L. R. 746 : 1625 P. C. 177.

—alienation by widow raises the presumption, that the purchaser made no belief. 17 C. W. N. 701 : 17

S. 114. (Court may presume existence of certain facts)—contd.
N. 837, overruled 19 C. 236 P. C. Discussed. Such consent of the reversioner also raises the presumption of the propriety of the transaction. 17 C. W. N. 1062.

—where the long delay of the plff. in bringing the suit prejudices the deft. and prevents him from bringing the best evidences that would otherwise be available inference will be against the plff. if he cannot explain the delay, 1929 All. 561 : 118 I. C. 154, (14 M. L. A. 67 P. C., 1924 P. C. 137.) *fol.*

—where the executant of a deed is of full age and while appearing before the Registrar admits the execution of the deed the presumption is that the transaction to which the deed relates is valid, 1930 All. 605.

—when a Hindu family migrates from one part of the country where the Mitakshara law prevails to another where the Daya-bhaga law prevails, the presumption is that it carries with it the laws and customs prevailing in the part wherefrom it has migrated. 29 C. 433 : 6 C. W. N. 490 : 29 I. A. 82 P. C.

—person (true owner) in possession of land before diluvion is presumed to have continued possession during the time of diluvion, till he is dispossessed, 8 C. 725, 7 C. 225, but in case of the possession by trespasser, possession during submergence rests with the true owner. 29 C. 518 : 29 I. A. 104, 6 C. W. N. 617 P. C., 8 Bom. L. R. 537, 9 C. W. N. 111.

—when evidence of possession on both sides is conflicting it may be presumed that possession follows title. 8 C. W. N. 876, 12 C. 38, 27 C. 25, 27 C. W. N. 305.

—unsettled and uncoupled waste land being the property of no private owner, must be presumed to belong to the State. 3 C. W. N. 695.

—where land is not let out for agricultural purposes and tenants are in possession for a long time by erecting buildings, and successions to the tenancy have taken place, presumption is that it is permanent tenure. 8 C. 960, 5 C. L. J. 178 : 11 C. W. N. 242, 5 C. W. N. 858 : 28 C. 738, but in the absence of any of the above circumstances there will be no such presumption. 3 C. W. N. 255.

—it is the completion of a right to which circumstances clearly point where time has obliterated any record of the original commencement. The longer the period within which and the remoter the time when first a grant might be reasonably supposed to have occurred the less force there could not have been lawful. 31 C. 1930 P. C. 103 : 32 Bom. L. R. 6. 722, P. C., 1926 Cal. 322, affirmed, 1924 P. C. 165. *Hel. on*, 1911 P. C. 6, *Ref.*

—non-payment of rent for a long time gives rise to the presumption that it is rent-free, 24 I. C. 319, 354, but the cause of non-payment may be ascribed to some other reason. 24 I. C. 536.

—there is no presumption that lands are *lakshiraj*. 4 M. L. A. 497, P. C. or permanently settled by Govt. 2 C. W. N. 695.

S. 114. (Court may presume existence of certain facts)—*contd.*

—non-production of original title deed raises a strong presumption against the plaintiff 62 I. C. 697.

—where a party suppresses a document the court is bound to make every presumption, consistent with facts against him. 63 I. C. 625, 1917 M. W. N. 487 P. C., 6 M. I. A. 422 P. C., but it cannot displace contrary inference supported by adequate evidence. 13 L. W. 293 63 I. C. 740

—non production of accounts by money-lender raises perverse presumption, 1925 Oudh. 11, 1922 P. C. 378.

—non-production of collection papers by tenant gives rise to a presumption against him. 8 C. W. N. 1: 30 C. 1033: 30 I. A. 177, P. C., 63 I. C. 625.

—non-production of account-books by a party when they would throw much light on the case, raises adverse presumption, 29 C. W. N. 911: 23 A. L. J. 97. 86 I. C. 122. 49 M. L. J. 162 P. C., 10 Lah. L. J. 93: 111 I. C. 596. 1928 Lah. 337, 31 Bom. L. R. 1310.

—but when one of the parties to a suit refuses to produce the documents in his possession though ordered by the court to do so whatever suspicion may be cast upon his conduct by his refusal it cannot alter conclusions which really turn upon the constructions of documents which are before the court 27 Bom. L. R. 746 1925 P. C. 177

—If the Crown withholds relevant document inference will be adverse. 50 C. 276, 36 C. L. J. 315, 316, 40 M. 402, 33 C. L. J. 336, 33 M. 620, *contra* 117 I. C. 292 1929 Mad. 399.

—the presumption arising from the non-production of a document is not quite as strong one in the case of an old document as in the case of a recent one as the possibility of its loss is more probable in case of old document. 1923 A. 441: 71 I. C. 654

—failure of the plaintiff to go into the witness box while he is the best person to give evidence as to his interest goes strongly against him 1930 Lah. I. 11 Lah. 142, 1927 P. C. 230 *Rel on*, 32 Bom. L. R. 924.

—if the best evidence though available is not produced it raises an adverse presumption 33 C. W. N. 430 49 C. L. J. 308: 27 A. L. J. 261: 57 M. L. J. 565 31 Bom. L. R. 721 114 I. C. 592: 1929 P. C. 95.

—when the prosecution fails to call any necessary witness the presumption will be that if the witness had been called he would not have supported the prosecution case. 121 I. C. 477: 31 Cr. L. J. 306: 1929 Pat. 651: 1929 Cr. C. 379, 29 Punj. L. R. 14: 1928 Lah. 125: 107 I. C. 100: 29 Cr. L. J. 212

—inconsistent pleas and not the pleas raised and proved, raises the presumption of falsity of defence. 33 C. W. N. 430: 49 C. L. J. 308: 27 A. L. J. 261: 31 Bom. L. R. 721: 114 I. C. 592: 1929 P. C. 95.

—the mere signature in a particular entry does not raise an irrebuttable presumption of law against which no evidence can

S. 114. (Court may presume existence of certain facts)—contd.
adduced by the maker of it. 109 I. C. 221: 1928 Lah. 821: 29 Cr L. J. 493.

—when a man and a woman have cohabited continuously for a number of years the law presumes in favour of marriage and against concubinage. 33 C. W. N. 645: 27 A. L. J. 465: 1929 P. C. 135: 10 Lah. 725: 117 I. C. 17: 31 Bom. L. R. 846: 50 C. L. J. 89: 1929 M. W. N. 676 P. C.

—contingent co-habitation and acknowledgment of parentage or treatment which tantamounts to acknowledgment, is presumptive evidence of marriage and legitimacy. 3 M. I. A. 295 P. C. 3 A. 723, 10 A. 289, 3 I. A. 291: 2 C. 184, 7 C. W. N. 617: 25 A. 403 P. C., 29 C. 111, 2 Lah. 207: 3 Lab. L. J. 317: 63 I. C. 387, 117 I. C. 64: 1929 Rang. 64. But unless all the above circumstances be present there will be no such presumption. 26 A. 295.

—long co-habitation raises the presumption of marriage unless the connection is known to have started in mere concubinage. 98 I. C. 887: 1927 Lah. 48: 8 Lah. L. J. 532: 27 Punj. L. R. 849.

—presumption is that the document was made on the date which it bears. 21 C. W. N. 585 P. C.

—where a document is on plain paper and is unstamped and undated and has no date on the face of the day before although . . . should have been produced, . . . document is not a genuine one.

—when the document is in the hand of the debtor the presumption is that the debt has been cleared up. 1927 Pat. 186, 17 C. W. N. 49 P. C., 29 C. 334: 23 I. A. 43. 6 C. W. N. 401 P. C., 103 I. C. 458, or the obligation has been discharged 121 I. C. 730: 1930 Lah. 443.

—but where the title deeds which the mortgagor handed over to the mortgagee are still in the hands of the latter no such presumption will arise. 46 C. L. J. 292: 105 I. C. 263: 39 M. L. T. 290: 53 M. L. J. 295 P. C.

—where a notice sent by post in a registered cover, is returned by the postman with a note that the addressee refused to take delivery and its posting is proved, presumption will be that the addressee did refuse it. 1930 Lah. 439: 121 I. C. 382: 31 Punj. L. R. 26.

—when official documents are destroyed by fire and documents are prepared, presumptions as to those documents are that official acts were regularly done. 21 C. W. N. 897, 1931 Pat. 343: 63 I. C. 226, 1923 P. 96, 3 Pat. L. T. 617: 67 I. C. 371.

—the meaning of Ill. (e) is that Official Act will be presumed to have been regularly done, but where under the Act certain things are required to be done before any liability attaches to any person, it is for the person who alleges that liability has been incurred to prove that the things prescribed in the Act have been actually done. 53 C. 718: 30 C. W. N. 713: 1926 Cal. 968: 96 I. C.

S. 114. (Court may presume existence of certain facts)—*contd.*
264, 9 Pat. L. T. 523; 111 I. C. 797; 1918 Pat. 600, 7 Pat. 733; 1928 Pat. 459.

—entries by the Collector in the order-sheet are not evidence as to service of notice within the meaning of s. 167 B. T. Act. 7 Pat. 733; 1928 Pat. 459; 9 Pat. L. T. 484; 115 I. C. 196.

—there is no impropriety to refer a thing as having been done when that thing is required to be done by a section in a statute. 96 I. C. 1039; 1926 All. 369; 24 A. L. J. 825 F. B.

—presumption is that the acts of the court were regularly carried out unless the contrary is shown. 93 I. C. 591; 1926 All. 691.

—things prescribed by statutes may be presumed to have been done. 48 A. 766.

—when an accused is convicted under s. 412 I. P. C. maximum penalty cannot be awarded to him presuming his knowledge of the nature of the dacoity under s. 114 Evl. Act. 32 C. L. J. 19.

—a conviction on the unsupported testimony of an accomplice is not maintainable. 54 C. 721; 31 C. W. N. 554; 1927 Cal. 536, 99 I. C. 34; 1927 Cal. 63, 41 C. L. J. 216; 1927 Cal. 63.

—the testimony of a professed accomplice should be carefully scrutinized with anxious search for corroboration. 112 I. C. 375; 1929 P. C. 15; 29 L. W. 155. P. C.

—the statement of an accomplice should be accepted when it is strongly corroborated in material particulars. 1930 All. 29; 127 I. C. 257; 31 Cr. L. J. 26; 1930 Cr. C. 45.

—an approver is unworthy of credit if he is not corroborated in material particulars. It is unsafe to convict an accused on the evidence of an approver corroborated by his son who is 7 years old and has been tutored. 1929 Lah. 587; 1929 Cr. C. 149; 11 Lah. L. J. 223; 30 Punj. L. R. 422.

—approver's statement as to the identity of the accused cannot be relied on unless corroborated. 48 C. L. J. 481; 30 Cr. L. J. 57; 113 I. C. 73.

—the corroboration of the approver's story requires most careful investigation upon the question of the identity of the accused person as participators in the occurrence. 1930 Cal. 430; 1930 Cr. C. 657.

—the corroboration need not necessarily consist of direct evidence. It is sufficient if there be circumstantial evidence committing the accused with the crime. 1929 Lah. 850; 1929 Cr. C. 626.

—the extent of corroboration required by the court naturally varies with the circumstances of each case including the character and antecedents of the approver and the degree of suspicion attached to his evidence. 1929 Lah. 850; 1929 Cr. C. 626, 11 Pat. L. T. 545.

—the word "may" in Ill. (b) does not mean "must." To entirely rule out the uncorroborated evidence of an accomplice may in many cases lead to miscarriage. 1929 Cal. 822; 1929 Cr. C. 669.

S. 114. (Court may presume existence of certain facts)—contd.

—the evidence of the accomplice stands on the same footing as other evidence save in one particular respect, namely that the evidence of an accomplice is regarded *ab initio* as open to grave suspicion. 9 Pat. L. T. 672; 1928 Pat. 630; 8 Pat. 235; 30 Cr. L. J. 137; 113 I. C. 329, 1929 Cr. O. 669; 1929 Cal. 822.

Ss. 115, 116, 117. (Estoppel).

—ss. 115 and 116 are not exhaustive. 20 C. W. N. 1135, 5 C. 669, 20 C. 296 P. C., 3 C. L. J. 629, 1930 A. L. J. 305; 1930 All. 330. But see, 12 C. W. N. 721.

—a party cannot both approbate and reprobate. 33 C. W. N. 493; 49 C. L. J. 335; 27 A. L. J. 406; 1929 M. W. N. 422; 1929 77 P. C., 10 C. W. N. 747; 42 I. C. 554 (C), 30 Bom. L. R. 523; 110 I. C. 266; 1928 Bom. 279.

—a person successfully opposing an application under s. 47 cannot subsequently raise the plea in regular suit that it is barred by e. 47. 117 I. C. 285; 1929 Nag. 79.

—estoppel must be pleaded by the party. 28 C. L. J. 91; 22 C. W. N. 179.

—estoppel being eminently a matter of pleadings it must be set up in the pleadings or issues. 1929 Med. 467; 119 I. C. 152.

—estoppel must be pleaded with sufficient clearance. 6 Pat. L. J. 273; 2 Pat. L. T. 556; 61 I. C. 807.

—every estoppel must be reciprocal, i.e., to bind both the parties. 24 C. L. J. 541, 20 C. W. N. 1140; 6 C. L. J. 621.

—estoppel is purely personal and will not affect others in so far as they claim a title otherwise than through the person estopped primarily. 85 J. C. 540; 1925 Cal. 993.

—rule of estoppel is purely personal against the persons estopped and does not create any substantive right *in rem*. It does not depend on any motive, knowledge or intention of the person making the representation. 110 I. C. 665; 1928 All. 459; 26 A. L. J. 1105; 50 A. 885.

—anything done by a person in his representative character does not create an estoppel on any personal claim by himself. 1930 P. C. 249; 7 C. W. N. 940 P. C.

—estoppel does not confer any title but is merely a rule of evidence which prevents one party from denying the existence of facts which he represented and upon which another person had been induced to act to his detriment. 56 C. 989.

—where the plffs. made statements in a suit inconsistent with those made by their father in a previous suit against the same defendants, but the plffs. did not claim the property in suit through their father and there had been no change in the position of the defts. by reason of the prior inconsistent statement, held that the plffs. were not estopped. 29 C. W. N. 861; 89 I. C. 207, 1925 Cal. 1193.

—a prior mortgage cannot take the advantage of any finding in a judgment of a partition suit in which he is not party. 8 C. L. J. 478; 13 C. W. N. 287.

Ss. 115, 116, 117. (Estoppel)—*contd.*

—there is no estoppel against statute. 60 I. C. 3

—there cannot be estoppel on a representation of mere opinion or on the representation of a point of law. 110 I. C. 665 : 1928 All. 459 : 50 A. 885 : 26 A. L. J. 1106, 1928 Lah. 802, 1929 Pat. 32.

—s. 115 deals with estoppel by misrepresentation. 33 C. 915 but misrepresentation on point of law does not operate as estoppel 30 C. 883

—the acquiescence or estoppel which will deprive a man of legal rights must amount to fraud. What elements are necessary to constitute such fraud enumerated. 73 I. C. 233 (O), 48 A. 453 : 92 I. C. 1017 : 1926 All. 324.

—the vendor of a property is estopped from denying the title of a person who has purchased from a purchaser from him. 36 C. L. J. 78.

—when one party does not rely on the action of the other party there is no estoppel. 23 C. W. N. 521.

—the test is whether the representation caused the other party to act on the faith of it. 20 C. 296 P. C., 4 C. L. J. 323, 62 I. C. 809.

—only that person to whom the representation was made or from whom it was designed can avail himself of it, if the declaration was intended to be general, then one, who did not hear it but who had the knowledge of it directly afterwards or within the time allowed for acting upon it, may act upon it. A declaration by the decree-holder in the sale proclamation that the property to be sold in auction is not subject to any incumbrance does not operate as estoppel as against him in favour of a private purchaser from the Jt. Dr. 1927 Cal. 34 : 97 I. C. 625.

—in order that representation may operate as an estoppel it must be a representation of an existing fact and not of mere intention or future promises. 56 C. 989.

—widow and reversioner joining in a gift, reversioner cannot challenge 41 A. 44 : 19 A. L. J. 799 : 63 I. C. 721 : 45 B. 264.

—where the plff. in a rent suit included some plots of land on the objection of the tenant reserving right to sue upon title afterwards, there was no estoppel by conduct. 4 Pat. L. T. 730.

—this sec. overrides ss. 91 and 92 Evl. Act. 72 I. C. 931.

—unless barred by estoppel by conduct true owner is entitled to recover the land with the building on it 73 I. C. 137.

—when a tenant builds on land under the impression that he has a permanent right and the landholder encourages him to do this, the latter is estopped from asserting that the lease was annual one. 3 Pat. L. T. 367, 67 I. C. 744.

—grantor of a permanent lease is estopped from asserting his right as that of a riyat. 105 I. C. 641 : 1928 Cal. 87.

—a tenant taking possession on the footing that land was not an estate cannot repudiate same while retaining the possession. 1929 Mad. 529 : 1929 M. W. N. 239 : 119 I. C. 577.

Sa. 115, 116, 117. (Estoppel)—*contd.*

—suit for rent estops a person from subsequently denying the tenancy. 64 I. C. 261.

—the purchaser in execution of a decree against the husband is his successor in interest and is estopped like the husband to deny the title of a mortgagee from the wife in whose name the property was purchased. 26 O. W. N. 436.

—the purchaser in execution of a money decree subject to a mortgage cannot subsequently challenge the mortgage. 95 I. C. 563 : 1926 Nag 446, (47 O. 446, 19 N. L. R. 5) *Rel. on.*

—representatives of deceased respondents not made party,—representation by co-respondents,—estoppel. The representation made by the appellant is a "thing" within the meaning of the sec., not being question of law but a mixed question of law and fact. 33 O. W. N. 873 : 1929 Cal. 819 : 57 C. 131

—the term 'intentionally' is used in s. 115 for the purpose of declaring the law of India to be precisely that of the law of England 17 C. 296 : 19 I. A. 203 P. C.

—estoppel is only a matter of proof and evidence and not a matter of equity. 20 C. 236, P. C., 29 B. 530, 25 B. 499, 5 O. 649. it is a mixed question of law and fact. 6 Bom. L. R. 440, 640.

—although the rule of estoppel is primarily a rule of evidence it affects substantive rights. 1930 All. 434.

—the doctrine of estoppel cannot be invoked to defeat the plain provision of Statute. 19 O. W. N. 208, 211, 22 O. W. N. 894, 36 C. 920, 38 C. 512, 17 C. W. N. 408, 60 I. C. 3, 20 N. L. R. 162 : 1925 Nag. 125, 111 I. C. 175 : 1928 Lah. 609 : 10 Lab. L. J. 413 F. B., 27 A. L. J. 859 : 115 I. C. 642 : 1929 All. 549, 56 C. 252, 118 I. C. 561 : 1929 Cal. 433, 53 B. 676 : 31 Bom. L. R. 778, 1929 Mad. 622 : 119 I. C. 472, 1630 Lab. 1034 : 31 Punj L. R. 842.

—there cannot be any estoppel against a statute nor can the parties contract themselves out of any statute. 87 I. C. 565 : 1925 Cal. 1962

—where in a probate proceeding a dispute as to the genuineness of the will was referred to arbitration and no objection was raised as to the award the parties were not estopped to raise objection in appeal as to the illegality of the reference. 1930 All. 840.

—an executor who has entered upon his duties as such is estopped from pleading immunity from his obligation as executor on the ground of no probate being taken out by him. 59 M. L. J. 596, 34 M. 211 *Ref.*

—although the house of an agriculturist is not saleable under s. 60 (1) (e) of the C. P. C. yet an agriculturist is estopped to take such objection when he has once conceded to it. 102 I. C. 616 : 8 Pat L. T. 563 : 1927 Pat. 233, (34 A. 22 F. B., 24 O. W. N. 575, 4 B. 25) *fol.*

—indemnity debt—*to the low price advertised*
le plead that the figure was
aside. 1929 Mad. 275 : 117 I.

Ss. 115, 116, 117. (Estoppel)—contd.

—no court can enforce as valid that, which competent enactments have declared, shall not be valid, nor can obedience to such an enactment or thing a court be dispensed by the consent of the parties, or by a failure to plead or to argue the point at the out-set. 52 C. 408 36 I. C. 545 23 A. L. J. 105 : 29 C. W. N. 893. 27 Bom. L. R. 770 : 1925 M. W. N. 257 P. C.

—it is not competent to a party to a contract enjoying the benefit under it to say that he is not bound by one of its terms. 82 I. C. 970 1925 Cal. 389.

—a compromise does not constitute an estoppel debaring a party to challenge it even if it be beneficial to him, if he has not taken any benefit thereunder. 108 I. C. 41 : 1928 Cal. 334.

“ . . . B. T. Aot, and the
“ . . . application under s.
“ . . . consent of parties,
“ . . . ending the decision
under s. 105 was given before final decision under s. 106 which case
was once dismissed for default 1925 Cal. 465

—when a person is treated by another in such a way as leads
“ . . . that other and on that
“ . . . tural family, the person
“ . . . through him will ha
“ . . . I. C. 540 : 1925 Cal. 993
“ . . . with on broad grounds
of justice and good sense, irrespective of the existence of a precedent
in point 3 O. L. J. 629 : 10 C. W. N. 747 : 33 C. 915.

—immaterial recital in a deed does not operate as estoppel. 13 C. L. J. 271.

—knowledge of the true state of things is a bar to plead estoppel. 17 C. W. N. 137, 2 Lah. 88 : 3 Lah. L. J. 223 : 62 I. C. 665, 1923 M. W. N. 225 : 72 I. C. 548, 1925 Mad. 95 : 85 I. C. 855 : 47 M. L. J. 622.

—where truth is accessible to a party the plea of estoppel upon representation fails. 122 I. C. 871.

“ . . . both parties are equally conver-
23 B. 406, 20 M. 326, 30 C. 539 :
Bom. L. R. 421 P. C., 33 C. 267.

—there is no estoppel where the real fact is known to the person to whom a false statement is made. 28 B. 393 : 30 C. 529 P. C., 1923 M. W. N. 225 : 72 I. C. 548, 25 Bom. L. R. 1170.

—or where truth of the matter appears on the face of the proceedings. 27 C. 407 : 27 I. A. 33 4 C. W. N. 533 P. C.

—a judgment operates as estoppel between parties, 6 C. L. J. 621, so also the decision in an execution case on a point of law. 2 C. L. J. 584.

—a mortgagee cannot question the title of the mortgagor. 114 I. C. 377 : 1928 Bom. 380 : 30 Bom. L. R. 987, 1929 All. 305 : 119 I. C. 569, 1930 All. 108 : 122 I. C. 414.

Sa. 115, 116, 117. (Estoppel)—*contd.*

as regards the part decreed does not estop the plff. from appealing against the dismissal of part 95 I. C. 10: 1926 Cal. 960. (12 C. L. J. 556, 21 C. W. N. 232) *Dist*

—a party cannot contend against an order after enjoying benefit under it But a D. Hr. may accept the costs deposited in a money-suit in which only simple interest is allowed and compound interest is not allowed and at the same time continue the appeal. 72 I. C. 554 (C)

—decree holder accepting deposit made in court under protest is not estopped from prosecuting appeal preferred by him, 1930 Lah. 26, 1923 P. C. 13 *Rel on.*

—a consent order, even where it has been obtained by fraud or mistake, is not a nullity, it is only voidable at the instance of the aggrieved party. 118 I. C. 7: 1929 P. C. 289: 57 M. L. J. 429 P. C.

—a party who has asserted a certain position in a previous litigation cannot re-agitate the matter on the assumption of fresh fact. 106 I. C. 484.

—if a party having a right stands by and sees another dealing with the property in a manner inconsistent with that right, and makes no objection while the act is in progress, he cannot afterwards complain. But acquiescence cannot rehabilitate or render valid a transaction which is *ultra vires* and illegal. Further, estoppel by acquiescence connotes, among other things, that the person . . . who is infringing his right is being . . . position has altered C. 748: 29 C. W. N.

—acquiescence is an instance of estoppel, *mera non-inter-* . . . notice in act prejudicial belief of his consent position is necessary.

—one who opposes an appeal on the ground that it should have been filed in a particular court is estopped from changing his contention and contending subsequently that it could not be filed in that particular court. 1930 All. 15: 120 I. C. 125: 1930 A. L. J. 224.

—negligence may operate as estoppel, 2 Bom. 1119, 820, 25 B. 599, if it is fraudulent. 73 I. C. 223 (C).

—act of the Govt. officer beyond his duty and authority cannot bind the Govt. unless it is ratified. 3 C. W. N. 695: 20 C. 792.

—it cannot be said that a Mohammedan tenant-in-common can be held to be represented by another Mohammedan tenant-in-common merely because their interests are identical. 22 A. L. J. 73.

—a principal is not estopped by agent's misrepresentation unless it was within the scope of his agency. 9 M. L. J. 57.

Ss. 115, 116, 117. (Estoppel)—contd.

—a person is not entitled to give an undertaking to a criminal court to abstain from certain action and to go and file a civil suit for declaration that the undertaking given by him was of no effect. 85 I. C. 536 : 1925 All. 605.

—where a vendee under a contract for sale of immovable property stated to the vendor that his (vendee's) money was ready and that the title was being investigated . . . here those two matters alone were . . . and where the vendor gave five days . . . the sale, held that the vendor . . . of his statements 41 C. L. J. 410 : 27 Bom. L. R. 814 : 1925 M. W. N. 410 : 1925 P. C. 124.

—a widow claiming through her husband cannot impeach a settlement come to by her husband with other members of his family whereby he released by necessary implication the interest which he had in the property. 1225 P. C. 306 : 94 I. C. 535. P. C.

—a person who takes the possession of certain property as mutwalli cannot after the wakf is found to be void say that the property was his but he can claim a share as the heir of the grantor. 35 C. 448 : 32 C. W. N. 248 : 1923 Cal. 130 : 105 I. C. 647.

—a coparcener enjoying property under the will of another coparcener and acting under its terms cannot repudiate the will subsequently. 104 I. C. 650 : 1927 Mad. 1066.

—where a person was at best a mere witness for the adoption by a widow and it was not shown that he made any representation in the matter on which the party acted he was not estopped from questioning the validity of the adoption. 1930 Pat. 417 : 11 Pat. L. T. 268 : 123 I. C. 770.

—the signature of attesting witness does not fix that witness with knowledge of the contents of the document or with any liability under its terms. 42 C. L. J. 215 : 90 I. C. 534 : 26 Punj. L. R. 215 : 87 I. C. 652 : 1925 Lah. 413, 112 I. C. 89 : 9 Lah. 224 : 1928 Lah. 432.

—although attesting witness it can do so when there the attester in the tr. 30 Bom. L. R. 267 : 107 I. C. 182 : 26 A. L. J. 553 : 1928 M. W. N. 933 : 1928 I. C. 20

—when the widow and the next reversioner joined in conveying a property, the reversioner cannot, after he comes into possession challenge the transaction under the rule of estoppel. 1925 Cal. 1205 : 87 I. C. 790.

—if a Hindu reversioner enters into a compromise which amounts to a settlement of a doubtful claim, it is binding on him although at the time of settlement he was merely a reversioner. 48 A. 687 : 96 I. C. 593 : 1923 All. 715.

—where a widow makes a gift of her husband's property to her daughter and daughter's husband jointly the daughter's acquiescence for less than 12 years after the death of the widow in

Ss 115, 116, 117. (Estoppel)—*contd.*

the position that her husband was co-owner is not sufficient to constitute any ground of estoppel. 1929 Mad. 467: 119 I C. 152, 42 M. 849 approved.

—a mere undertaking may operate as an estoppel though it may not amount to a contract 1925 Cal 94 84 I. C 124.

—release by a person from liability upon the understanding of foregoing a definite claim against a third party estops him from enforcing the claim to the detriment of that third person. 1930 All 434

—to oppose joinder of parties precludes objection for non-joinder. 6 P. L. T. 237. 1925 Pat 57 84 I C 293

—when in partition proceedings under the E. Partition Act, it was conceded by all the landlords that certain lands were rent free lands and the lands were taken as such in the adjustment of assets of the different co-sharers, held that the landlords to whom the lands were allotted could not afterwards deny that lands were rent free 29 C. W. N. 333. 86 I C 835. 1925 Cal. 635

—where subsequent to a lease the lessor's agent wrote a letter to the lessee stating that the latter had a permanent right in the leasehold and he might erect building thereon and the lessee accordingly erected a building held that without deciding the question whether the lease was originally a permanent lease or not the landlord was estopped from evicting the lessee from the demised land. 30 C. W. N. 49: 41 C. L. J 543 6 Pat. L. T. 404. 23 A. L. J. 548. 1925 M. W. N. 453 P. C

the limit of his authority, the agent has reasonable grounds for acting in the authority, 26 C 701: 30 C. W. N 316, P. C, but not when the agent acts fraudulently for his own interests. 6 C. W. N 429

the ground of estoppel cannot be pleaded against an infant 2 C. W. N. 481. 26 C. 381: 30 C. W. N. 330.

to pay a debt contracted by him by fraudulent misrepresentation 24 C. 265: 1 C. W. N. 270.

—where an infant, by fraudulent misrepresentation as to his age, induces plff. to advance him money on security of a mortgage the plff is entitled to a mortgage-decree without interest. 2 C. W. N. 18, 60 I. C. 267, 1923 Bom. 169 46 B 137

—a minor who represents himself to be a major and competent, would be estopped from filing a suit through guardian

—but when an infant is induced by false representation that he is a major to contract he is not bound subject to the Contract Act. Lah. L. J. 413: 9 Lah. 701: 1

Ss. 115, 116, 117, (Estoppel)—contd.

—a person is not entitled to give an undertaking to a criminal court to abstain from certain action and to go and file a civil suit for declaration that the undertaking given by him was of no effect. 85 I C. 586; 1925 All. 605.

—where a vendee under a contract for sale of immovable property stated to the vendor that his (vendee's) money was ready and that the title was being investigated and where those two matters alone were wanting to complete the sale and where the vendor gave five days' notice to the vendee to complete the sale, held that the vendee was estopped from denying the truth of his statements. 41 C. L. J. 334; 3 P. L. R. 152; 83 I C. 410; 27 Bom. L. R. 814; 1925 M. W. N. 314; 30 C. W. N. 410; 1925 P. C. 124.

—a widow claiming through her husband cannot impeach a settlement come to by her husband with other members of his family whereby he released by necessary implication the interest which he had in the property. 1925 P. C. 306; 94 L. C. 535. P. C.

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—although attestation by itself does not amount to an estoppel it can do so when there are circumstances showing the consent of the attester in the transaction. 32 C. W. N. 538; 47 C. L. J. 189; 30 Bom. L. R. 267; 107 I C. 20; 29 Punj. L. R. 182; 26 A. L. J. 553; 1928 M. W. N. 933; 1928 P. C. 20.

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—to oppose joinder of parties precludes objection for non-joinder. 6 P L. T. 237: 1925 Pat. 57. 84 I C 293

—when in partition proceedings under the C. E. Partition Act, it was conceded by all the landlords that certain lands were rent free lands and the lands were taken as such in the adjustment of assets of the different co sharers, held that the landlords to whom the lands were allotted could not afterwards deny that lands were rent free 29 C. W N 333: 86 I C. 835 1925 Cal 635

—where subsequent to a lease the lessor's agent wrote a letter to the lessee stating that the latter had a permanent right in the leasehold and he might erect building thereon and the lessee accordingly erected a building held that without deciding the question whether the lease was originally a permanent lease or not the landlord was estopped from evicting the lessee from the demised land. 30 C W N. 49: 41 C. L J 543 6 Pat L. T. 404. 23 A. L. J. 548 1925 M. W. N. 453 P. C

the limit of his authority, the
has reasonable grounds for
in the authority, 26 C 701:
he agent acts fraudulently for
his own interests. 6 C W. N. 429

he pleaded against an infant
C. W. N. 481, 26 C. 381. 3
W N 330.

to pay a debt contracted
by him by fraudulent misrepresentation 24 C. 265. 1 C W. N. 270.

—where an infant, by fraudulent misrepresentation as to his age, induces plff to advance him money on security of a mortgage the plff is entitled to a mortgage-decree without interest. 2 C. W. N. 18, 60 I. C 267, 1923 Bom 169 46 B 137

himself to be a major and compe-
rent, would be estopped from
filing a suit through guardian.

—but when an infant induces a person to enter into a contract
to
be
10

ss 115, 116, 117. (Estoppel)—*contd.*

—when a minor makes fraudulent representation of his age, he is not protected under law. 25 C. 371; 2 C. W. N. 18 and 201. 23 Bom. L. R. 975, 62 I. C. 237, 1 Lah 389; 59 I. C. 393, 69 I. C. 543, though he is not estopped from pleading his minority. 50 A. 862; 16 A. L. J. 837; 110 I. C. 373; 1928 All 626, but a false representation made to a person who knows it to be false, is not such a fraud as to take away the privilege of infancy. 30 C. 539; 7 C. W. N. 441; 30 I. A. 114; 5 Bom. L. R. 421 P. C.

—when an alleged minor was represented by his brother with whom he had common interest, he is estopped from pleading in a subsequent suit that the decree passed against him was invalid on the ground of his having attained majority just one month prior to the suit. 48 A 661; 96 I. C. 606; 1926 All 673, (28 A. 416) *fol.* (20 A. 90, 45 A. 701) *Dist.*

—an infant is not estopped by the acts and admission of others (mother and natural guardian). 17 C. W. N. 10.

—a mortgagor is estopped from denying his right to mortgage alleging that he is only a trustee. 1 Pat. L. R. 225; 4 Pat. L. T. 437.

—a deed is not binding against a witness to it, as he cannot be supposed to know its contents. 17 C. W. N. 225 n, 3 C. W. N. 207 24 C. L. J 487, 21 C. W. N. 225 42 C. 876 P. C, 26 C. W. N. 201 P. C.

—where a person admits the execution of a document before the Registrar after it has been explained to him, it cannot subsequently be accepted that he was ignorant of the nature of the transaction. 33 C. W. N. 407. 114 I C 563 1929 P. C. 81.

—ss. 116 and 117 are not exhaustive of the doctrine of estoppel by agreement. 23 C 915 3 C L J 629; 10 C. W. N. 747, 32 C. W. N. 887, 49 C. L. J. 1

—the tenant cannot deny the title of the landlord who lets him in. 7 C. W. N 596, 3 C. W. N. 99, 6 C. 725, 69 I. C. 647 (A). L. R 4 A 398, or to whom he has attorned. 45 C. L. J 249; 103 I. C. 93; 1927 Cal. 141.

—s 118 provides that a tenant cannot deny that at the beginning of the tenancy the landlord had a title of the property but the tenant is not estopped from saying that the landlord's interests have ceased or that on the death of the lessor the property has not devolved on the piff. 110 I. C. 376 1928 All 650; 26 A. L. J. 1255.

—when the lessor accepted and acted upon the kabuliya of the lessor and the persons claiming under him are estopped from denying the validity of the kabuliya. 1926 Cal. 882; 94 I. C. 661.

—s 116 does not apply to tenants who have previously been inducted. 1923 Lah 483; 73 I. C. 450, 72 I. C. 855, 1928 Pat. 281

—if through ignorance or fraud a tenant attorn to a certain person he is not estopped from showing that the lessor had no title either when the lease was executed or attornment was made by payment of rent; but the onus of proving want of title is on the lessee. 91 I. C. 669, 1926 Cal. 720.

Ss. 115, 116, 117. (Estoppel)—*contd.*

—the tenant may say that the contract of tenancy is void or voidable on account of misrepresentation or fraud. 30 Bom. L. R. 741 : 111 I. C. 911 : 1918 Bom. 265.

—when tenant has executed a *kabuliyat* and has obtained possession of certain land he cannot, in a reot suit, set up the plea that the lessor is only a *benamdar* for some other person. 50 C 572, 20 A. L. J. 907, 49 C. 37.

—in a suit for rent by registered proprietor, deft. may set up the title of a third person to whom he had attorned in good faith. 4 C. W. N. 606

—the tenant can prove subsequent cessation of landlord's interest and one way in which the tenant can show that the title has determined is by proving an eviction by title paramount or the equivalent of such eviction. 63 I. C. 754 (C), 35 C. L. J. 146.

—when a lease is taken for the benefit of the local public the persons cannot afterwards turn round and claim an absolute interest in the lands and deny right of the public. 1925 Cal 1233 88 I. C. 505

—when a tenant after taking land from one person pays rent to another he is not estopped from disputing the title of that other. 1925 Cal. 492.

—though a tenant cannot set up title against his landlord he can set up his own title against third person. 1930 All 299 : 1930 A. L. J. 564.

—landlord acknowledging in deeds the permanency of the tenancy is estopped to deny it. 23 C. W. N. 966.

—a person not claiming possession of land under tenant is not estopped from denying title of the lessor. 44 A. 671

—a tenant cannot deny title of landlord without restoring or giving up possession. 3 Lah. L. J. 227 : 60 I. C. 502, 24 C. L. J. 103, 20 C. W. N. 1335, 9 O and A. L. R. 1041, 67 I. C. 269, 32 C. W. N. 867 : 1928 Cal 546.

—the tenant cannot deny the title of the landlord who introduced him to the land after the tenancy ; he must show that the title of the landlord was defective at the time if any in some future. 9 C. L. J. 1 : 56 C 15 :

—a person entering into a covenant in his *kabuliyat* is bound to recognise right so recorded even if such rights were incorrectly recorded and had no real existence. 33 C. L. J. 317 : 63 I. C. 161.

S. 118. (Who may testify).

—before recording the evidence of a child the court should test his competency and make a note of the same although it is not compulsory. 1923 P. 91 : 3 Pat. L. T. 649 : 66 I. C. 73.

—before examining an infant his capacity must be examined and he must be administered on oath. 41 C. 406 : 18 C. W. N. 147 : 18 C. L. J. 582, 11 C. W. N. 51.

S. 118. (Who may testify)—*contd.*

—where the child upon whom an offence under s. 376 I. P. C. has been committed is in the opinion of the court unable to give relevant information by reason of tender years and consequent immaturity of judgment, it should not be examined at all. 1930 Cr. C. 365; 1930 Lab. 337, 38 A. 49 fol. 41 C. 406 not fol.

—the only test of competency is that the witness should not be prevented from understanding the question put to him or from giving rational answers to them for tenderness of age or other cause. 102 I. C. 349; 8 Pat. L. T 594

—where a Judge deliberately abstained from administering oath to a girl of 6 or 7 years of age the only eye witness to a murder, the evidence was still admissible. 6 Pat. L. T 147; 61 I. C. 705.

S. 122. (Communication during marriage).

—communication during marriage should not be allowed to be given out. 40 C. 891, 1923 Lab. 40.

—a communication made by an arbitrator to his wife shortly before his death admitting the acceptance of bribe from a party can be allowed to be disclosed only on the fulfilment of the requirements of s. 122, 1930 Lab. 280; 120 I. C. 494

S. 123. (Evidence as to affairs of state).

—statements made by witness in the course of departmental inquiry into the conduct of a police officer charged of taking illegal gratification are not privileged and the accused are entitled to cross-examine. 16 C. W. N 431.

S. 124. (Official communication).

—statements made by witnesses in the course of departmental inquiry into the conduct of police officers who were subsequently put upon trial on charges of taking illegal gratification are not privileged. 16 C. W. N 431.

—documents produced or statements made under process of law cannot be said to be made or given "in official confidence." 33 M. 63; 19 M. L. J. 263. 4 M. L. T 317, 26 C. 281.

—the deposition at the departmental enquiry is only admissible either to corroborate or contradict evidence. 40 C. 893 p. 918; 18 C. W. N. 185.

S. 126 (Professional communication).

—instructions to counsel are only privileged in the sense of being not to be disclosed to the opponent. There is no privilege to ask counsel whether he is acting for or against the party on whose behalf he is acting. He cannot use this privilege to prevent the disclosure of his instructions. 18 C. W. N. 185.

—there is however a presumption of good faith on the pleader's part, and in order to make him liable for defamation there must be convincing evidence that he was actuated by improper motives personal to himself. 41 C. 514.

S. 126. (Professional communication)—*contd.*

—an admission by a person to his pleader that he is a lunatic.
 ... the statement is made

... though her pleader for a
 ... without the production
 of the will the contents of which were disclosed to the pleader, in a
 later proceeding the pleader was privileged under s. 126 Evl. Act
 not to disclose the contents of the will. 1929 Bom. 414; 31 Bom.
 L. R. 1046; 122 I. C. 56.

—a solicitor is not protected from disclosing that he got a
 letter from his client, though he is not bound to disclose its contents.
 42 I. C. 532.

—conversation between one of several defendants and plaintiff's pleader
 about the compromise of suit is admissible in evidence as there was
 admittedly no express condition that evidence of interviews should
 not be given. 20 O W. N. 1217; 44 C. 130

—duty of the attorney to keep client's instruction and docu-
 ments, secret. 84 I. C. 353; 1925 Bom. 1 P. C.

—absence of litigation or prospect thereof at the time the
 confidential communications are made is no excuse for disclosures,
above case.

—disclosure of advice given by another person is also for-
 bidden. *above case*.

S. 127. (Section 126 to apply to inter pleaders, etc.)

—section 126 extends to communication made to the pleader's
 clerk the same confidential character that attaches to a communi-
 cation to a pleader directed under s. 126. 26 C. 53; 2 O W. N. 649

—statements made to the clerk of the mukhtar who was
 acting as the pleader of the accused, are privileged as those made
 to his employer. 25 C. 736

S. 130. (Production of title-deeds of witness, not a party).

—a lessee is not bound to produce his original title deed. 17
 C. W. N. 103; 15 C. L. J. 6

—if a document be the title deed of a witness or any person
 who would be entitled to refuse to produce it, he cannot be com-
 pelled to produce the document. 11 C. L. J. 170

—but a party is entitled to interrogate on facts directly in
 issue e.g., particulars of a document. 41 C. 6

S. 132. (Incriminating question of witness.)

—a witness who being actuated by malicious motives makes
 a voluntary and relevant statement not elicited by any question
 put to him while under examination, to injure the reputation of
 another commits an offence under s. 500 I. P. C. and cannot claim
 privilege under this sec. 32 C. 756; 9 O W. N. 911; 2 C. L. J.
 105, 21 C. 392 *fol.* (17 B. 575, 17 M. 137, 11 M. 477) *Ref.* 27 (1), 2
Discussed. 14 C. L. J. 31 *Dist.*

S. 132. (Incriminating question of witness)—contd.

—the proviso to sec. 132 does not apply unless the witness objected to answer the question. It applied again to question asked in the course of the trial. 16 C. W. N. 503, 15 C. L. J. 399; 39 C. 348, 22 Bom. L. R. 1247 F. B.

—a person who answers question without seeking the protection of s. 132 Evl. Act is not entitled to protection in a charge of defamation except to the limited privilege under s. 499 I. P. C. 52 M. 432; 116 I. C. 337; 1929 M. W. N. 82; 1929 Mad. 236; 56 M. L. J. 570; 30 Cr. L. J. 613.

—the mere record of a deposition is not by itself evidence of compulsory or voluntary nature of the statement of a witness. 105 I. C. 820; 1928 Nag. 58.

—the witness must claim the benefit under the sec. 40 A. 271.

—the court is to decide whether a communication is privileged or not. 44 A. 360.

—statement of witness on oath is privileged. 43 A. 92; 18 A. J. 940. 58 I. C. 825.

—the witness need not take objection to the question. 22 Bom. L. R. 1247; 52 I. C. 324.

—co-accused's position is sufficiently protected by s. 132. 5 Lah. L. J. 429; 73 I. C. 521.

S. 133. (Accomplice.)

—a person who has knowledge of the commission of the offence but keeps quiet for some days, is no better than an accomplice. 30 C. W. N. 816. 96 I. C. 867; 27 Cr. L. J. 1011.

—distinction between an accomplice and an informer. 10 Lah. L. J. 262; 1928 Lah. 647; 110 I. C. 676; 29 Cr. L. J. 740; 29 Punj. L. R. 703.

—a retracted statement of an approver is admissible against an accused. 12 L. W. 385; 61 I. C. 528, 4 Pat. L. T. 381; 73 I. C. 965, 69 I. C. 462, 1923 Lah. 335.

—in dealing with the evidence of an accomplice the Judge is not bound to rely on such statements only as are corroborated by other reliable evidence. 27 Bom. L. R. 120; 86 I. C. 72; 26 Cr. L. J. 696, 1925 Nag. 78, 1925 Oudh. 96 I. C. 262; 27 Cr. L. J. 918.

—a conviction based solely on the evidence of the accomplice whose story was itself not satisfactory in the absence of any corroboration of any material point connecting and identifying the accused with the offence, is bad in law. 86 I. C. 401; 6 Lah. L. J. 608; 26 Cr. L. J. 769, 93 I. C. 884; 1927 Pat. 232; 27 Cr. L. J. 484.

—the testimony of one accomplice should not be taken as corroborated by another accomplice. 1929 Nag. 215; 114 I. C. 457; 30 Cr. L. J. 311; 1929 Cr. C. 110, 1929 Cr. O. 626; 1929 Lah. 850, 1923 Lah. 76, 20 P. R. 1919 Ref.

—where there is nothing outside the confession of the co-accused the accused must be acquitted. 48 A. 409; 1926 All. 377; 95 I. C. 74;

S. 133. (Accomplice)—*contd.*

24 A. L. J. 410; 27 Cr. L. J. 746, 1929 Lsh. 850; 1929 Cr. C. 626, 1927 Lsh. 581.

—where the approver's testimony was not sufficiently corroborated by the evidence as to the recovery of articles which were incapable of identification, the accused should not be convicted. 84 I. C. 1052; 26 Cr. L. J. 412; 1925 Lah. 44.

—where the witnesses corroborated the approver on a certain detail but were unable to identify any of the accused the evidence was not of much value. 1929 M. W. N. 794.

—if the court is satisfied as to the veracity of the testimony of an accomplice, conviction may be based on uncorroborated evidence of the accomplice. 85 I. C. 236; 26 Cr. L. J. 492; 1925 Rang. 122, 114 I. C. 609; 30 Cr. L. J. 333; 1925 Neg. 233, but it is subject to the rule of guidance contained in Ill. (h) of the 114 Evi. Act that an accomplice is unworthy of credit unless it is corroborated.

—it would be unsafe to accept the testimony of an accomplice unless corroborated by some independent circumstances. 1929 Cr. C. 87, 120 I. C. 721; 31 Cr. L. 153; 1930 Neg. 97.

—where a witness is found from his own testimony to be privy to the crime alleged to be committed by accused, his evidence is no better than that of an accomplice. 1825 Loh. 253.

—a retracted confession is not the testimony of an accomplice. 40 O. L. J. 551.

—when the evidence of an approver is discarded it must be discarded as a whole and the defence cannot base arguments on it. 1930 Pat. 164; 1930 Cr. C. 260.

—there is no doubt that the uncorroborated evidence of an accomplice is admissible in law. 51 C. 160; 28 C. W. N. 536; 81 I. C. 712.

—it is not necessary that an approver should be corroborated as regards every single statement that he makes. On uncorroborated statement he can be believed if the jury thought it reasonable. 52 C. 595; 42 C. L. J. 501; 87 I. C. 925; 26 Cr. L. J. 1037, 96 I. C. 127; 27 Cr. L. J. 879; 1926 All. 70.

—a retracted confession must be much more corroborated than evidence of accomplice taken on oath. 84 I. C. 712; 1925 Cal. 406.

—where the evidence of an approver is uncorroborated as regards every uncorroborated point he can be believed if the jury thought it reasonable. Proceedings of verification by inquiry on the spot may be of value as corroboration of the evidence of the accomplice. 52 C. 595; 42 C. L. J. 501; 87 I. C. 925; 1925 Cal. 872; 26 Cr. L. J. 1037.

S. 138. (Order of examination and direction of re-examination.)

—this sec. does not deal with the rights of the party but only provides the order in which the proceedings should be conducted. 1929 Cal. 822; 1929 Cr. C. 669

S. 138. (Order of examination and direction of re-examination)—contd.

—it implies that a party must have had an opportunity to cross-examine. 73 I. C. 339.

—where a witness dies after examination-in-chief and before cross-examination, the evidence is admissible for its worth. 48 M. 1. 1925 Mad 497.

Ss. 141–143. (Leading question.)

—leading questions such as cannot be properly put in cross-examination of a hostile witness cannot be put by public Prosecutor in examination-in-chief. 2 Pat. L. T. 757.

—when leading question may be asked. 42 C. 957; 19 C. W. N. 676.

S. 145 (Cross-examination as to previous statement in writing).

—if the prosecution can cross-examine his own witness. 50 C. L. J. 467; 1930 Cal. 139; 1930 Cr. C. 139.

—a witness should not be disbelieved without drawing his attention to a document inconsistent with his deposition. 45 M. L. J. 438; 1923 M. W. N. 622; 33 M. L. T. 309 P. C.

—witness must be given opportunity to explain. 19 C. W. N. 702; 21 C. L. J. 1; 39 B. 441 P. C.

—if the defence wishes to cross-examine a witness on a previous deposition his attention must be drawn to the discrepancies giving him an opportunity to explain them. It is not proper for the court to stop the examination and have the whole deposition filed with a view to discrepancies being pointed out at the time of argument. 1929 M. W. N. 789.

—before contradicting the witness by his statement abstracted in a judgment his attention should be called to those parts of it which are to be used for the purpose of contradicting him. 53 Mad. 952; 60 M. L. J. 14; 1930 M. W. N. 601, 39 Bom. 441 P. C.

—where an admission is not put to the person making and he is not examined on it under s. 45, the admission is not legal evidence. 1930 Lah. 695, 1915 P. C. 7; 21 C. W. N. 280, Ref. 31 P. R. 1903 Diss. from.

—this section must be strictly followed; any laxity of practice cannot be condoned. 26 A. L. J. 673; 1928 All 511; 115 I. C. 650.

—previous deposition must be produced. 7 Lah. L. J. 339; 90 I. C. 657, 8 W. R. Cr. 87.

—previous deposition of a witness though not read over to the witness is admissible under this section to contradict the witness at a subsequent trial. 104 I. C. 100; 28 Cr. L. J. 772; 1927 Pat. 315; 8 Pat. L. T. 773.

—previous statement of a prosecution witness used under this section to cross-examine the witness or under s. 155 Evi. Act, for discrediting him cannot be used as substantive evidence against the accused. 105 I. C. 677; 28 Cr. L. J. 965; 1927 All. 705; 25 A. L. J. 994.

S. 145 (Cross-examination as to previous statement in writing)—*contd*

—the first information report is admissible under this section and may be relied on by the defence to contradict the informant. 44 C. L. J. 253. 1927 Cal. 17.

Ss. 146—152. (What questions should not be allowed.)

—cross examination to credit is necessarily irrelevant to any issue in the action, its relevancy consists in being addressed to the credit or discredit of the witness in the box so as to show that his evidence for and against the relevant issue is untrustworthy. 19 C. W. N. 617 21 C. L. J. 528; 17 Bom. L. R. 455; 39 P. 386 P. C.

—the question put to a witness in cross-examination must be either relevant and pertinent to the matter in issue or calculated to elicit answers affecting the witness's title to credit 6 Mys. L. J. 551 F. B.

—scandalous questions if not relevant should not be allowed. 1923 Cal. 315, 5 M. L. J. 138. 65 I. C. 693.

—when a question in cross examination reflects not on the witness but on a third party s. 150 which must be referred back to s. 146, can have no application 16 C. W. N. 145. 9 I. C. 509.

—it is unprofessional on the part of counsel to cross-examine a witness as to facts within his personal knowledge. 40 C. 898. 18 C. W. N. 185.

—the question whether a counsel has exceeded the power given him for the purpose of conducting his client's case is that which can only be dealt with by Full-Bench 16 C. W. N. 145.

—the court's disciplinary power over advocates in relation to question put in cross-examination is not confined to question reflecting on the witness personally but extends also to questions reflecting on third parties 18 C. W. N. 185; 40 C. 898.

—discussion on the subject of examination and cross-examination 16 C. W. N. 265. 39 C. 245.

S. 154 (Question to own witness.)

—ss 153 and 155 must be strictly construed and interpreted. 32 C. W. N. 593; 47 C. L. J. 550; 108 I. C. 1; 30 Bom. L. R. 818; 6 Rang. 142; 1928 P. C. 54.

—if the prosecution can cross-examine his own witness, interpretation of the sec 50 C. L. J. 467; 1930 Cr. C. 139. 1930 Cal. 139.

—a witness is hostile if he tries to defeat the party's case by suppressing the truth. 13 C. 53 p. 56.

—a witness is considered adverse when in the opinion of the Judge, he bears a hostile animus to the party calling him and not merely when his testimony contradicts his proof; when the witness is treated as hostile and cross-examined by the party calling him, this must be done to discredit the witness altogether and not merely to get rid of that part of his testimony. 24 C. W. N. 861; 47 C. 1043; 33 C. L. J. 34.

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S. 154 (Question to own witness.)

—as 153 and 155 must be strictly construed and interpreted. 32 C. W. N. 593; 47 C. L. J. 550; 108 I. C. 1 30 Bom. L. R. 818; 6 Rang. 142; 1928 P. C. 54.

—if the prosecution can cross-examine his own witness, interpretation of the sec. 50 C. L. J. 467; 1930 Cr. C. 139; 1930 Cal. 139

—a witness is hostile if he tries to defeat the party's case by suppressing the truth. 13 C. 53 p. 56.

merely to get rid of that part of his testimony. 47 C. 1043; 33 C. L. J. 34.

S. 154. (Questions to own witness)—*contd.*

—mere changing the version does not necessarily make a witness hostile. 13 C. 53 p. 56; 37 C. L. J. 173; 71 I. C. 657.

—unless there is something in the deposition which conflicts with the earlier statement affording ground for thinking that the deponent has been gained over by the defence the prosecution is not entitled to declare him hostile 94 I. C. 705; 1926 Pat. 316; 27 Cr. L. J. 657, 7 Pat. L. T. 567.

—where a witness called by a party is cross-examined by him, his evidence cannot be believed in part and disbelieved as to the rest but it must be rejected *in toto*. 37 C. L. J. 173; 71 I. C. 657.

—under this sec. the result of cross-examining a prosecution witness by the prosecution itself is to discredit that witness altogether and merely to get rid of a part of his testimony. 42 C. L. J. 504; 53 C. 372; 92 I. C. 442; 1926 Cal. 139.

—a witness who is unfavourable is not necessarily hostile, for a hostile witness is one who from the manner in which he gives his evidence, shows that he is not desirous of telling the truth to the court. 34 C. L. J. 107, 49 C. 93; 66 I. C. 15.

—a party when called by his opponent, cannot, as of right be treated as hostile, the matter being solely in the discretion of the court 34 C. L. J. 107, 49 C. 93; 66 I. C. 15.

—when defence puts questions in cross-examination in leading form under sec. 143, the plff. may with the leave of the court under sec. 154. cross-examine on the point 19 C. W. N. 676

—a witness is not necessarily hostile because in an absent minded moment he admits the truth. 3 Pat. L. J. 419; 1918 Pat. 241; 44 I. C. 33.

S. 155 (Impeaching credit of witness.)

—as to the right of the party to impeach the credit of his own witness. 16 C. W. N. 189n.

—the evidence of a witness who is hostile to the Crown may be impeached by reference to the Police diary. 3 Pat. L. J. 568; 45 I. C. 272.

—statements made by third persons to the police during police investigation may be admissible to impeach the credit of the person. 44 C. L. J. 253. 1927 Cal. 17.

—the first information report is admissible under s 155 and may be relied on by the accused to impeach the informant's credit. 44 C. L. J. 253; 1927 Cal. 17.

—evidence of the particular estimate formed by a Judge in another case of the credit to be attached to the testimony of a witness who is cross-examined in a subsequent trial is inadmissible. 4 C. W. N. 684 p. 685

—where the previous deposition of a witness is relied on to impeach the credit of a witness, the contradictory statements alone can be admitted in evidence. 15 C. L. J. 621.

—the expression "which is liable to be contradicted" in cl. (3) is equivalent to "which is relevant to the issue." 17 C. 344.

S. 155. (Impeaching credit of witness)—*contd.*

—statement to third person may be proved to show that the witness is unreliable but it cannot prove the truth of his own unsworn statement or make it evidence against third person 11 C. W. N. 370 : 5 C. L. J. 123 : 34 C. 129 : 9 Bom. L. R. 3 : 17 M. L. J. 67 P. C., 42 M. L. J. 278 66 I. C. 326.

—statements of a witness made to a police officer may be used in court by the prosecution for discrediting him if he tells there a different story under s. 155 and s. 162 Cr. P. C. is no bar. 3 Pat. L. J. 568 : 45 I. C. 272.

—statements made to him in writing are admissible under the provisions of s. 145 in the matter of putting the same upon to the witnesses 130 C. W. N. 835 : 91 I. C. 1

—previous depositions of witnesses examined for the prosecution in a criminal trial can be admitted to corroborate the present story. But those depositions cannot be used to contradict what the witnesses state in their cross-examination in the previous trial. They could not be admitted for that purpose under s. 157. 1925 Pat. 381 : 86 I. C. 153.

Ss. 157-158. (Former statements.)

—retracted statements of witness before the investigating police officer and the committing Magistrate may be used in the Sessions Court. 23 Bom. L. R. 820.

—retracted statement not made before the accused cannot be used as substantive evidence. 1921 M. W. N. 872 : 14 L. W. 612.

—evidence of identification in the jail cannot be used as substantive evidence in the trial. 19 A. L. J. 947.

—oral accounts of statements made by witnesses to the police in the course of investigation under s. 15 Cr. P. C. are admissible under s. 157 Evl. Act. 6 Pat. L. J. 241 : 2 Pat. L. T. 565 : 61 I. C. 785.

—a recital of age in guardianship petition is not admissible in evidence unless it is relevant under s. 32 (5) Evl. Act. 36 C. L. J. 213.

—testimony of plaintiff or defendant should not be disbelieved because they are parties. Their evidence should be scrutinised like that of other witnesses. 49 C. 345, 35 C. L. J. 175.

—s. 157 which lays down the general rule must be taken subject to the exception contained in the special rule enacted by s. 162 Cr. P. C. 2 C. W. N. 712.

—this section cannot be invoked to let in statements made by somebody else as evidence for the purpose of corroborating a statement made by the witness to be recalled to give evidence.
110 I. C. 521.

ss. 157-158. (Former statements)—*contd.*

—where a person making a dying declaration chances to live, his statement cannot be admitted in evidence as a dying declaration under s. 32, but it may be relied on under s. 157, to corroborate the testimony of the complainant when examined in the case. 4 Bom. L. R. 434.

—under s. 157 the deposition of a witness given at a previous trial when the accused person was absconding, but with regard to whom the M. had omitted to record that he was absconding, was admitted in corroboration of the witness's evidence given at the subsequent trial. 8 A. 672.

—any Magistrate is competent to hold a test identification and to prove the statements made before him under s. 157 even though he is not empowered to deal with the matter under inquiry. 32 C. W. N. 616 : 29 Cr. L. J. 497 : 1928 Cal. 500 : 109 I. C. 225.

—statements by a witness at the trial should be altogether rejected if it is in hopeless conflict with his previous statements 7 Cr. L. J. 371 : 26 P. L. R. 619 : 1925 Lah. 483.

—previous statements might be used to corroborate or contradict statements made at the trial, not to corroborate statements made prior to the trial. 34 B. 599, 53 C. 372 : 92 I. C. 442 : 1926 Cal. 133 : 27 Cr. L. J. 266.

—statements made in a sale deed may be admissible in evidence as corroborative of the subsequent evidence at the trial upon material points. 53 B. 699 : 1929 M. W. N. 852 : 31 Bom. L. R. 1030 : 1929 P. C. 231 : 57 M. L. J. 287 : 50 C. L. J. 135 : 33 C. W. N. 1006 : 118 I. C. 1 : 50 C. L. J. 135 P. C.

—a witness called by a party that his leader could not appear in proceedings under s. 157 : 35 C. L. J. 356.

—the first information received to be recorded, and not a statement made by a witness during investigation after the Sub-Inspector has actually arrived on the scene and himself seen what has happened. 47 A. 260 : 23 A. L. J. 14 : 85 I. C. 650 : 26 Cr. L. J. 554

—first information report against the accused is admissible under s. 157 in order to corroborate the prosecution case. 44 C. L. J. 253 : 1927 Cal. 17.

—the first information report can be used only for the purpose of contradicting or corroborating a witness and for no other purpose. 1930 Cr. C. 632 : 1930 M. 632 : 58 M. L. J. 397. 17 C. W. N. 1213, 47 A. 280, 44 C. L. J. 253.

—as the first information to the Police can be used in evidence under ss. 157 and 158 to corroborate or impeach the testimony of the person lodging the first information such a document becomes valueless if drawn up by some person other than the proper informant. 16 C. W. N. 145 : 61 I. C. 650.

—s. 162 Cr. P. C. prohibits the use of the records of the statement of a witness under s. 161 Cr. P. C. as evidence but does not override the general provisions of the Evi. Act, and such

Ss. 157-158. (Former statements)—*contd.*

statement is admissible under s. 157. 36 C. 281: 6 Pat. L. J. 241: 2 Pat. L. T. 565: 61 L. C. 785.

—statements of third parties made in the course of police investigation can be used as corroborative evidence under this section if the person who made the statement is called as a witness. 54 C. 237: 44 C. L. J. 253: 99 L. C. 227: 28 Cr. L. J. 99: 1927 Cal. 17.

—earlier statements cannot be let in under s. 157 if there is nothing in the deposition of the witness in the present trial which may be corroborated by the earlier statements. 42 C. L. J. 504.

—where owners of adjacent lands were examined as witnesses and their purchase deeds were sought to be let in, the documents were admissible in order to corroborate their oral testimony but as soon as they are admitted the court may look into their contents as there is no prohibition to such course. 44 C. L. J. 582. 1927 Cal. 230: 99 L. C. 907.

—oral statements by witnesses in Police investigation which do not corroborate their evidence at the trial are inadmissible. 48 M. 640: 1925 M. W. N. 68: 86 L. C. 209: 43 M. L. J. 195: 1925 Mad. 579.

—a report of the commission of an offence made at a police station or even the deposition of witness previously made would be admissible for the purpose of corroborating him or of throwing doubt on his statement in court, but would be inadmissible for the purpose of proving that the facts stated in it are correct. 47 A. 280: 23 A. L. J. 14: 85 L. C. 650: 1925 All 303.

—a general rule laid down in s. 157 Evi. Act is controlled by the special provisions contained in s. 162 Cr. P. C. Not only is the record of the statement of a witness to the police taken under s. 161 excluded from evidence but even the proof of such statement by oral evidence for the purpose of corroborating the prosecution evidence. 26 P. L. R. 304: 6 Lah. 171.

—where a *chowkidar* has deposed, his Book Register of death and birth is corroborative for its worth. 21 Ind. C. 540.

—entries made in the diary of a deceased illiterate *chowkidar* although not admissible under s. 32 (2) may be used under s. 157 to corroborate the actual writer or under s. 159 to refresh his memory. 2 Pat. L. J. 42.

—a police officer can be allowed to depose to what a witness had stated to him in the investigation, for the purpose of corroborating what the witness had said at the trial. 39 B. 58.

—a letter written by a police officer to his superior stating that certain person would make certain statement for a certain sum of money is not receivable for any purpose. 34 O. W. N. 593: 47 C. L. J. 550: 26 A. L. J. 377: 30 Bom. L. R. 818: 1928 P. C. 54: 26 A. L. J. 377: 6 Rang. 142: 108 L. C. 1 P. C.

—when the plaintiffs sought to establish their pedigree by proving *inter alia* that A and B were brothers, held that to that effect made by one of the plaintiffs in a deposition.

§§ 157-158. (Former statements)—contd.

long before the controversy in suit arose, was admissible in evidence. 12 C. W. N. 266.

—a statement of a raped girl that she had been raped, in answer to enquiries by persons who saw her weeping is admissible under s. 157 Evl. Act. 25 Cr. L. J. 1214: 82 I. C. 142: 1925 Nag. 74.

§§ 159-160. (Refreshing memory).

—the word 'writing' in the sec. includes printed matter. 1930 Lah. 371: 1930 Cr. C. 331: 120 I. C. 798: 31 Cr. L. J. 168.

—it is not necessary that the writing used to refresh the memory of a witness should be admitted in evidence. Documents not produced within proper time may be used for refreshing memory. 7 Pat. 305: 32 C. W. N. 565 47 C. L. J. 302: 107 I. C. 337. 30 Bom. L. R. 305. 26 A. L. J. 124. 54 M. L. J. 325 P. C.

—Recruiting Officer was entitled to refresh his memory from the contents in the Register written by his clerk and which he himself signed daily. 26 C. W. N. 680.

—in a suit for damages for negligence in supervising a building an Engineer's report is admissible to prove the quantity of damages if the contents of the report are used by him for refreshing his memory. 43 C. L. J. 479: 1926 Cal 988: 97 I. C. 200.

—when a document enables a person to aware to a particular fact from the conviction of his mind on seeing the writing, he may be allowed to refresh his memory by looking at the record. 49 C. 573: 35 C. L. J. 279: 29 C. W. N. 68.

—it is doubtful whether a police officer can refresh his memory as to statements recorded by him under s. 162 Cr. P. C. unless the writing is already in and had been put to the witness who is alleged to have made the statement. 10 C. W. N. 890.

—there is no authority for saying that a witness can be compelled to refresh his memory from any document unless it is either in the possession of the party who desires to put it to the witness or is at least such as he can insist on having produced. 8 C. W. N. 154, 10 A. L. J. 76.

—time of father's death can be refreshed by his son from the mortgage bond executed by him in which his father is described as deceased. 72 I. C. 985

—the opposite party is permitted to inspect a writing and to refresh the memory of a witness to secure the full benefit of the witness' recollection as to facts to check the use of improper documents and to compare his oral testimony with his written statement. 8 C. 732.

—where a person records, not the actual words used but simply note of the impression made on his mind by a speech, such notes are inadmissible under s. 160. 32 M. 184.

—a horoscope can be used to prove the date of birth stated in it if the person who wrote it or who read it soon after it was written is examined. 6 N. L. J. 1: 1923 Nag. 164: 71 I. C. 140.

Ss. 159-160. (Refreshing memory)—*contd.*

—memoranda kept by a witness can be itself used in evidence but it can be used to corroborate him or for refreshing his memory. 1930 Nag. 24: 120 I. C. 224, 10 N. L. R. 44 *Rel. on.*

—a witness can refresh his memory by reference to document read at or near the time of the transaction. 1930 Lah. 371: 1930 Cr. C. 331: 120 I. C. 798: 31 Cr. L. J. 168.

S. 163. (Giving of evidence of document called for.)

—this sec. does not render proof of the document to be exhibited unnecessary or alter the normal incidence of that burden. 1923 M. W. N. 292: 72 I. C. 459, 5 Bom. L. R. 380, 23 O. C. 156: 57 I. C. 973.

—account books called for and inspected by the opposite party need not be proved and are admissible *in toto*. 1928 Nag. 119: 106 I. C. 305.

—this sec. applies to criminal trials also. When therefore notice to produce statements made to a Magistrate during departmental enquiries is given to the Crown by the defence and such statements are produced, inspected and used for cross-examination of several witnesses the Crown is entitled to have the whole of the statement as evidence. 1930 Cal. 370: 1930 Cr. C. 634.

S. 165. (Judge's power to put question or order production).

—the provisions of this sec. only forbid the cross-examination without the leave of the court, of any witness upon any answer given in reply to a question asked by the Judge. 24 O. 288, 29 O. 287.

—the court cannot examine witness without giving the parties notice and opportunity to cross-examine. 19 C. W. N. 903

—examination of witness by the appellate court. 47 C. 1043: 24 C. W. N. 860: 33 C. L. J. 31

—the court's decision must rest not upon suspicion but upon legal ground based on legal evidence. 33 C. L. J. 107, 25 C. W. N. 409: 1921 M. W. N. 80 P. C. 36 C. L. J. 395.

—the words "any witness" in s. 165 include a court witness. 9 O. & A. L. R. 549. 74 I. C. 108.

—the court can call for a document under this sec., 1923 Gudh 59: 70 I. C. 278.

—the court is not entitled to put question with regard to the statements made by witnesses to the investigating officer in order to show that the witnesses had made contradictory statements to the police and before the court to the court as it amounts to an of the law, viz. the provisions 1926 Cal. 147: 92 I. C. 453: 27 C

S. 167. (No new trial for improper admission or rejection of evidence.)

—under s. 167:—
of itself for reversal
support the decision.

—an improper
for a new trial if the
decision, but in the
apply this principle as sufficiency of evidence cannot be gone into
in second appeal. 93 I. C. 189; 1927 Cal. 1; 31 O. W. N. 35.

—where the improper admission of evidence does not pre-
judice the accused in any way it is not a ground for new trial. 27
Cr. L. J. 753; 7 Pat. L. T. 673; 95 I. C. 273.

—where inadmissible evidence is let in appellate court must
consider if injustice has occurred and if the jury were likely to
give different verdict. 1925 Cal. 161; 84 I. C. 451; 26 O. L. J. 307.

—an erroneous omission to object to inadmissible evidence
does not make it admissible. The omission to take objection to
the admissibility of a document becomes fatal only in cases where
if the objection is taken in time, any defect in its admissibility can
be cured and the document made admissible. In other cases ob-
jection as to inadmissibility can be raised even in second appeal
though it was not raised in the lower court. 41 O. L. J. 374; 66 I.
C. 731; 1925 Cal. 1034.

SUBJECT INDEX.

Admissibility, see, 'Admissibility.'

Admission, see ss. 18—21.

Attestation, see, ss. 66—88.

Burden of proof, see, ss. 101—106.

Estoppel, see, 'Evidence Act,' ss. 115—117.

Examination of witness, see, 'examination.'

Proof, see, 'proof.'

Witness, see, examination of witness.

ADMISSIBILITY.

General,

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L. J. 47

without objection
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afterwards. 35 O.

court cannot be taken for the first time in second appeal. 36 O. L. J.
186; 64 I. C. 266, 72 I. C. 748.

competence of a witness is
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464; 31 M. L. J. 125; 69

Admissibility—*contd.*

—the court cannot look at any document not on the record without giving other side opportunity of being heard. 67 I. C. 871 : 1923 Cal. 194.

—that and survey map are not conclusive as to whether
 . . . of the bed of a river were included in the
 C. L. J. 336 : 1923 Cal. 247 : 71 I.
 of possession. 4 Pat. L. T. 487 :

—the absence of an entry in a document is distinct from the question whether the contents are binding on persons not parties to it. 36 C. L. J. 389 : 1923 Cal. 261 : 74 I. C. 383.

—Batwara papers and writ of attachment issued in 1792 and 1797 are admissible in evidence to show the non-existence of tenures. 36 C. L. J. 389 : 1923 Cal. 261 : 74 I. C. 384.

—where a judgment is admitted to prove that there was litigation which terminated in a certain way, all the recitals do not form part of the evidence. 28 C. W. N. 62

—a document not otherwise valid may be admissible as proving admission of the executant. 3 Pat. L. T. 387 : 67 I. C. 49.

—a statement made to a S. I. just before death is not evidence. 3 Pat. L. T. 398 : 1922 P. 40 : 65 I. C. 1002.

—the production of a judgment in a previous case only establishes the fact that there has been a judgment but it does not prove its correctness. 36 C. L. J. 9 : 1923 Cal. 240 : 70 I. C. 194.

—a decree between a co-sharer and the Government is admissible. 50 C. 446 : 45 M. L. J. 444 : 1923 M. W. N. 511 : 32 M. L. T. 162 P. C.

—the court should not rest its decision merely on suspicion unsupported by legal testimony. 36 C. L. J. 396 : 27 C. W. N. 305 : 1923 Cal. 220, 25 C. W. N. 409.

—substance of pleadings contained in the judgments may furnish evidence of the allegation made by the parties on that occasion. 36 C. L. J. 434 : 1923 Cal. 18 : 71 I. C. 680, 18 M. 73 : 9 C. 586, 5 C. L. J. 521 : 15 M. 19, 15 M. 378.

—recital in a will are not evidence to prove the truth of the fact stated therein but they can be looked at for seeing whether it is consistent with the assertions made by the testator in his lifetime. 26 C. W. N. 772.

—Road-cess Returns are admissible only against the maker. 42 C. L. J. 14 : 89 I. C. 747 : 1925 Cal. 1189.

—a retracted confession is admissible for its worth. 49 C. 573 : 26 C. W. N. 680 : 35 C. L. J. 279 : 69 I. C. 145.

—great caution should be exercised in arriving at a conclusion by a comparison of thumb-impessions. The positive evidence of witnesses should not be lightly brushed aside. 36 C. L. J. 9 : 1923 Cal. 240 : 70 I. C. 194.

—former statements of a witness can be used to contradict or corroborate them but they cannot be used as substantive . . .
 38 C. L. J. 109.

Admissibility—contd.

—any particular answers given by a witness may, after it is given, be ruled out as irrelevant, but the court cannot say beforehand that all the evidence not yet taken is going to be irrelevant. 1923 Nag. 58.

—a kabulyat executed between the pliffs tenure-holders and his superior landlord cannot affect the deft's estate in any way that existed before the date of the kabulyat. 1922 Cal. 375.

—much weight cannot be attached to a partition paper in the absence of detailed information. 36 C. L. J. 389; 1923 Cal. 261.

—partition deed of property of Rs. 100 or upwards must be registered 15 C. W. N. 375, 1923 Rang. 57; 74 I. C. 47; 12 C. L. J. 25. (13 M. 281, 2 Bom. L. R. 800, 12 Bom. L. R. 635) Expl. contra. it need not be in writing. 25 C. 210.

—an unregistered document of partition is inadmissible and oral evidence as to partition is also inadmissible, but if the arrangement has been acted upon and there is part performance by the party seeking relief, proof of the arrangement can be let in. 4 Pat. L. T. 657, 1923 Rang. 57; 74 I. C. 47, 20 A. L. J. 777; 1922 A. 493.

—fact of partition may be proved by oral evidence though the document is inadmissible. 1923 Lab. 392, 25 C. 210.

ADMISSIBILITY OF THE FOLLOWING DOCUMENTS.**Amalnama.**

—not registered is not admissible, 15 C. W. N. 204n. Contra. is admissible. 33 C. 502, 7 C. 502, 7 C. 733, 30 C. L. J. 90; Dist. 13 C. W. N. 265; 8 C. L. J. 538; 41 C. 511, 15 C. W. N. 536.

Award.

—arbitration award in criminal proceeding in which all the parties to the present suit were not parties, is admissible in evidence as to right of outflow of water through a drain. 14 C. W. N. 61 (note)

Batwara paper.

—entries in *Batwara* papers are valuable pieces of evidence. 29 C. W. N. 333; 86 I. C. 835; 1925 Cal. 635; 87 I. C. 694 (c).

Certificate.

—of doctor, as regards age is not admissible. 21 C. W. N. 257 P. C.

—of a manager, cannot go in evidence unless it is proved by himself. 19 C. W. N. 1148.

Cess return.

—in a suit for enhancement of rent, a road-cess return filed by one sharer is presumptive evidence in favour of another sharer. 30 C. 1033; 8 C. W. N. 1; 30 I. A. 177 P. C.

Admissibility of the following documents—*contd.*

—non-entry in return filed by third person is admissible in evidence 15 C. L. J. 7; 17 C. W. N. 108.

—cess returns are admissible in favour of stranger. 6 C. L. J. 22, 23 W. R. 293, 39 C. 995, 1005.

—cess return filed on behalf of minor is not admissible in his favour 18 C. W. N. 1076.

—road-cess returns are admissible only against the maker. 42 C. L. J. 14 p 18; 89 I. C. 747; 1925 Cal. 1169.

Chittas, Kabuiyats, accounts and receipts.

—are valueless without proper oral evidence regarding them. 29 C. 187 P. C.

—*Jummasasi Baki papers* are only corroborative evidence. 10 C. L. J. 545, 8 C. 926, 931, they are not independent evidence. 10 C. 248, 16 C. L. J. 428, 17 C. W. N. 774, 90 I. C. 561.

—*Jamabandi papers* prepared by the landlord though not binding upon the tenant is admissible in evidence to prove the fact that since the creation of the tenancy rent has been assessed and that such assessment was on the basis of a certain price. 5 Pat. 157; 7 Pat. L. T. 375; 1926 Pat. 197.

—*Chittas* prepared by zemindars in the absence of tenant are admissible in evidence in rent suits but their evidentiary value will depend on circumstances of each case. 88 I. C. 548; 1925 Cal. 1104

Chittas of Govt.

—of private land is not admissible but of *Thakbust* land is admissible. 17 C. W. N. 151, 13 C. L. J. 293, 16 C. 136, 7 C. W. N. 849.

—made for revenue purpose is admissible. 19 C. W. N. 1015, 19 C. W. N. 1038.

—prepared by Govt. are admissible in evidence though their value will depend on the circumstances of each case. 105 I. C. 61 (C). For other cases see sec. 83 *Evi. Act*.

Compromise petition.

—to lease is admissible. 17 C. W. N. 347.

—relating to properties other than those in suit is not admissible. 16 C. L. J. 71, 19 C. W. N. 347, 36 M. 46, 2 C. L. J. 343, 11 C. L. J. 543, *Contra.*, is evidence of title. 1917 Pat. 161, proves party's admission. 1917 Pat. 181.

—when it forms part of the consideration, it is admissible. 35 C. 837; 12 C. W. N. 849; 7 C. L. J. 492, 5 C. W. N. 485, 24 I. C. 135, 34 C. 456

—which does not convey or transfer or release any immovable property is admissible. 20 C. W. N. 210 P. C.

—if parties give effect to, by conduct it is admissible. 19 C. W. N. 250 P. C., 27 C. W. N. 1054.

—is admissible to prove the oral agreement to grant 16 C. L. J. 71, 19 C. W. N. 317.

Admissibility of the following documents—contd.

—filed after decree in a mortgage suit as regards interest and adjustment which the court accepts, is admissible. 17 C. L. J. 565.

—filed in criminal court as regards increment of rent but court making no order upon it, is not admissible. 12 C. W. N. 851, *Contra*, is admissible. 23 C. L. J. 563.

—reciting mortgage deed may be used as evidence when mortgage bond is not forthcoming. 21 C. W. N. 265 P. C.

—not *res-judicata* with respect to properties other than in suit. 36 M. 46, 34 C. 456. *Dist.*

—alternative terms in, must be given effect to. 23 C. L. J. 483.

Compromise decree.

—in title suit is admissible in rent-suit to prove rent stated therein as admission. 13 C. W. N. 217.

—in contravention of sec. 29 B. T. Act is nullity. 17 C. W. N. 496.

—is admissible without registration. 38 B. 576.

Decree.

—for rent obtained by co-sharer is admissible to prove rent. 22 C. W. N. 304.

—for rent obtained by co-sharer making others *pro-forma* defendants is admissible to prove rent in a suit brought by *pro-forma* defendant. 17 C. W. N. 1016, 22 C. 533, 10 C. W. N. 1084, 25 C. 521.

Horoscope.

—is not admissible to prove age. 17 C. 819, 9 C. 613 *Contra*. It is admissible. 17 M. 134.

Judgment, decree, not inter partes.

—not admissible. 6 C. 171 F. B., 20 C. W. N. 643. The existence may be admissible as a fact in issue or as a relevant fact or as a transaction but the recitals in it are not admissible. 20 C. W. N. 643 *Contra*. It is admissible. 22 C. 533 P. C., 1 C. W. N. 265 P. C., 25 C. 522 : 2 C. W. N. 501, 6 C. L. J. 22, 18 C. W. N. 954.

Land revenue reports.

—not admissible. 20 C. L. J. 516.

Lease.

—to prove nature of tenancy is admissible though not registered. 19 C. W. N. 115 n.

10 C. W. N. 618 *Contra*. 13 C. W. N. 595.

—agreement to, is admissible without registration. 33 C. 302, 25 C. W. N. 220.

Admissibility of the following documents—*contd.***Letter.**

—in place of *lissa* is not admissible. 16 C. W. N. 240 n, 37 C. 293, 34 C. 284, F. B. but as surety bond or agreement of gift is admissible. 16 C. L. J. 53 P. C., 20 C. W. N. 1054 P. C., 24 C. L. J. 279 P. C. but secondary evidence is not admissible. 26 C. 53, 2 C. W. N. 649 to prove admission is admissible and need not be stamped or registered. 23 W. R. 325, 5 C. 864.

—by or to accused is admissible. 18 C. W. N. 386.

Map.

—made for one purpose cannot be used for another purpose. 14 C. L. J. 578.

—filed as correct in former proceeding is admissible. 7 W. R. 249

—maps and surveys made for revenue purposes are official documents. 1921 Cal 977.

—a map and a report of the commissioner prepared in one suit may be admissible in evidence in another suit if the commissioner is examined as a witness. 105 I. C. 61 (v).

Memorandum of agreement.

—under which the leasee takes possession though not registered is admissible. 19 C. W. N. 56.

Paper book.

—Paper books of the H. C. are not admissible in evidence in the absence of proof that the papers printed in that book are the true copies of the original documents. 1929 Pat. 41; 114 I. C. 469.

Partition Chitta

—distributing Govt. revenue is a public document and its copy is admissible. 15 C. W. N. 515.

Partition deed.

—unregistered, not admissible. 15 C. W. N. 375, 12 C. L. J. 25

Partition Paper.

—copies of, under Regulation XIX of 1814, between parties is admissible. 23 C. W. N. 43, 25 C. 90 and 17 C. W. N. 779; 17 C. L. J. 462 *Dist.*, 13 C. W. N. 93 *followed*

—entries in *bafwara* papers are valuable pieces of evidence. 29 C. W. N. 333; 86 I. C. 835.

Petition.

—verified, is admissible to prove admission. 14 W. R. 484, 21 W. R. 34.

Plaint.

—rough draft of, previously filed, is admissible. 15 M. 19.

—copy of verified, is admissible. 15 W. R. 437; 10 B. L.

Ap. 31, *contra*. 7 Pat. L. T. 267; 92 I. C. 184; 1926 Pat. 184.

Admissibility of evidence—contd.

—in order to rely on circumstantial evidence in criminal cases the following principle should be observed:—(1) The circumstance from which an inference adverse to the accused is sought to be drawn must be proved beyond all reasonable doubts and must be closely connected with the fact sought to be inferred therefrom: (2) the circumstance from which an inference of guilt is sought to be drawn must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. 35 C. W. N. 169; 52 C. L. J. 417; 1931 Cr. C. 43; 1931 Cal. 11.

—description of witness in the heading of the deposition recorded, is no evidence. 3 C. W. N. 241 P. C.

—statement of age of a witness at the heading of the deposition is not evidence. 31 C. L. J. 90, 8 C. W. N. 241, 24 I. A. 108 P. C.

—deposition of the defendant in a previous suit as witness is not admissible as admission in the subsequent suit under s. 33 Evi. Act. 36 C. L. J. 186.

—to prove a deposition it is not enough to file a certified copy of the deposition. Identity of the person who gave the deposition must be proved. 30 C. W. N. 254; 1926 Cal. 705; 93 I. C. 115.

—absence of entry in a document is relevant; its effect is to be determined on the light of the general evidence in the case. 36 C. L. J. 359.

—of a witness dying before cross-examination is not admissible. 17 C. W. N. 230.

—of plaintiff to contradict the defendant's document after defendant has closed his case is not admissible. 37 B. 582.

ADMISSIBILITY OF STATEMENT.

—of one-self in a previous deposition to prove pedigree is admissible if that was made at a time when there was no controversy. 12 C. W. N. 266.

—made in another suit is admissible. 22 C. W. N. 363.

—made in a *Kabulyat* is admissible. 19 C. L. J. 1.

—previous statement of a member of a family as to the non-existence of a person is admissible under s. 39 Evi. Act. 18 C. W. N. 160 n, so the statement of a relative as to the age of the minor. 19 C. W. N. 646, 20 C. 758 *fol.* 24 C. 265 and 17 C. 849 *not fol.* also the statement of a relative as to the birth of a person is admissible. 19 C. W. N. 646.

—statement made by defendant in talk of compromise is admissible and it binds the co-defendant if there be joint liability. 25 C. L. J. 42; 20 C. W. N. 117; 21 C. W. N. 996.

—statement partly against and partly for, the former can be used against one but the latter cannot be used for him. 17 C. W. N. 1013.

—previous statement may be proved to be mistake or untrue, unless another person has been induced thereby to change his position. 11 C. W. N. 321 p. 329 P. C.

Admissibility of statement—*contd.*

—statement which is communication during marriage is not admissible. 40 C 891.

—statement of deceased person as to custom, if made at the time of controversy, is not admissible. 21 C L. J. 9 P. C.

—statement of husband as to date of birth of wife is admissible. 19 C W. N. 787 P. C.

—statement of presiding judge as to what happened before him is conclusive evidence. 21 C. W. N. 33 F. B.

—statements of ages of witnesses at the head of deposition do not furnish evidence on the subject. 28 C. W. N. 1033; 39 C. L. J. 90 89 I C 357, 8 C. W. N. 24 P. C., 21 A. 108 *Ref.*

—statement in a will cannot be evidence of title. 41 C. L. J. 258; 87 I C. 401.

OBJECTION TO ADMISSIBILITY

—objection to admissibility of document should be taken at the first instance and cannot be taken in appeal. 6 C. L. J. 22, 34 C. 1039; 6 C L J. 678 P. C.

—where a certain piece of evidence is not legally admissible the omission is admissible. 40 C. L. J. 39, 78 I. C. 288; 107 I. C. 457; 30 Bom L. R. P. C.

—an irrelevant document does not make it admissible, but where such document is admitted in the first Court without any objection no party can object to its reception in evidence at any late stage. 43 C. L. J. 274; 91 I C. 279.

—a party cannot in second appeal challenge the admissibility of a document which had been admitted in evidence without objection in both the lower courts. 97 I. C. 414.

—when evidence is received without objection in direct contravention of an imperative provision of the law, the principle on which unobjected evidence is admitted, be it acquiescence, waiver or estoppel, none of which is available against a positive legislative enactment does not apply. 27 C. W. N. 134.

—when an instrument is once admitted in any proceeding either under s. 35 or 36 of the Stamp Act, it is available in that proceeding for all purposes as if it had been properly stamped at the outset. 27 C. W. N. 513.

—objection to admissibility may be taken at any time but the method of proving must be questioned before proof. 9 C. W. N. 111, 82 I. C. 974, (C); 1925 Cal. 452, 8 pat. 783; 1929 Pat. 739.

—an erroneous omission to object to that which is not evidence does not make it admissible. 23 I. A. 106, 29 A. 76 P. C., 91 I. C. 449 (C), 43 C. L. J. 274.

—when inadmissible evidence is wrongly admitted without any objection being made the appellate court should dismiss the evidence from consideration. 47 C. L. J. 288; 107 I. C. 457; Bom. L. R. 757; 1927 P. C. 127

Examination of witness—contd.

—a pleader in the *munsiff* court can put questions from his own recollection and knowledge. 13 O. W. N. 340: 36 C. 375: 9 C. L. J. 259.

—a pleader who is authorised to withdraw the suit or to give up claims, can place the draft on special oath and bind his client thereby. 24 O. W. N. 385.

PROOF.

—living as husband and wife may dispense with the proof of marriage 17 C. W. N. 494, 38 C. 700.

—It would be unwise of a judge to act in a disputed Indian case upon oral evidence that there had been an ante-nuptial agreement which would in effect be a marriage settlement unless there was contemporaneous written evidence to corroborate the oral evidence. 29 O. W. N. 1013: 42 C. L. J. 8: 48 M. 605: 88 I. C. 327: 1925 M. W. N. 717: 23 A. L. J. 662.

—contents of document cannot be proved inferentially. 17 O. W. N. 531.

illiterate person cannot
writing of the attesting
35 A. 365.

go in evidence unless it
W. N. 1148.
document may be given

—admission of execution of a mortgage bond by some executant is not sufficient proof against others. 24 C. L. J. 175: 20 C. W. N. 1044, 7 C. W. N. 384, *Dist.*

—rent receipt may go in evidence without proof. 24 C. 251, 7 W. R. 15, 13 W. R. 34, 20 W. R. 264, *contra.*, 14 W. R. 211, 8 W. R. 488.

—when attesting witness repudiates the execution and signature in the will it may be proved by other evidence. 20 C. W. N. 292, 20 C. W. N. 673, P. C., 23 C. L. J. 632.

—plff. must prove his case though *ex-parte*. 20 C. W. N. 1192.
—doctor's certificate as to the proof of age is nothing. 21 C. W. N. 237 P. C.

—copy of transfer certificate containing date of birth is no evidence thereof. It is the admission register alone which would be evidence. 57 M. L. J. 609: 30 L. W. 914.

—presence of semen on the woman's loin-cloth is not a sure test that she consented to an intercourse. 1925 Leb. 94.

—In case of a grant century old when direct evidence cannot forthcome, resort must be had to secondary evidence or to the inference of a legal origin to be drawn from long user. 18 O. W. N. 1217: 20 C. L. J. 407, P. C., 18 C. W. N. 898, P. C., 24 I. C. 354.

—a recital in a deed of recent date executed by a Hindu widow is no proof of the fact recited therein. 1929 All. 223: 119 I. C. 514: 27 A. L. J. 309.

Proof—contd.

—where there is a difficult investigation of facts the history of which is somewhat obscure contemporaneous documentary evidence should be preferred to any amount of oral evidence. 119 I. C. 49 : 1929 All 545.

—if the original deed of grant be not forthcoming, title may be proved by subsequent conveyance. 18 C. W. N. 898 P. C.

—the ordinary means of proving the execution of a document is by calling some one who saw the writing or who knows the handwriting or by the comparison of signature with other signature on other documents. 59 I. C. 188 (c).

—suspicion is not a ground for judicial decision. 49 C. 93 : 66 I. C. 15.

—ordinarily in a boundary dispute the commissioner's report is of great importance 90 I. C. 643. -

—for a deposition to be proved it is not enough merely to file a certified copy of the deposition. It is necessary to adduce evidence proving the identity of the person who gave the deposition. 30 C. W. N. 254.

—when the evidence is let in the question of burden of proof is merely academic. 106 I. C. 243 : 1928 Pat. 190 : 9 Pat. L. T. 393.

IDENTIFICATION.

—a witness's evidence of identification given in court should only be accepted if he identified the same persons whom he had

as evidence against accused persons, where the M. who recorded the nota has not been called as a witness. 81 I. C. 45 : 25 Cr. L. J. 557.

—witness picking out accused person from crowd is no proof that such accused was participator in the crime. 5 Lah. 398.

In the
now that
minute in
evidence
that A
J. 402;

Identification—contd.

—the fact that an eye-witness is unable to identify the accused after a lapse of six years is not of great importance. 95 I. C. 593. 1926 Lah. 392 : 27 Cr. L. J. 817

—Where witnesses who are alleged to have picked out the accused at an identification parade do not themselves say that they picked out the man, but the officers conducting the parade speak to what took place, their evidence is in no sense secondary evidence and is admissible. 92 I. C. 167 : 1926 Lah. 310 : 27 Cr. L. J. 215.

—at an identification parade it is unnecessary for the officer holding the parade to record at the time or examine the witnesses as to the part played by each individual. 92 I. C. 167 : 27 Cr. L. J. 215 : 1926 Lah. 310.

—where an identification parade is sought to be proved, the correct procedure is not to have the Magistrate who conducted the identification parade simply depose to a memorandum which he prepared at the time. The summary of the result of the identification should be given ordinarily as part of the oral evidence in the case. 93 I. C. 1051 : 27 Cr. L. J. 555 : 1926 Lah. 378.

—Where the accused is charged of false personation under s. 82 of the Registration Act it is open to the court to take the finger impressions of the accused for comparison. 104 I. C. 626 : 6 Pat. 305 : 28 Cr. L. J. 850.

INDIAN EXTRADITION ACT.

—Extradition under any condition is an invasion of the common law right and where there is a treaty followed by a Statute recognising the treaty, the procedure is to be in accordance with the treaty and statute and no further condition can be imposed by the courts. 30 Cr. L. J. 24 : 1930 N. W. N. 381, 47 C. 37 fol. 48 C. 323 Explained.

—the East Indian possessions of France are not a foreign state. *above case.*

Sec. 3-4.

Or. C. L. 327.

... by person accused
must be regulated by
the fullest discretion
353 : 10 Ind. C. 958 : 2

... is not subject to
. 737 : 38 C. 547 :
16 M. L. J. 128
12 C. L. J. 305 :

12 Ind. C. 273 Dis.

—the jurisdiction of the High Court in the nature of Habeas Corpus under s. 491 ... issue by the Govt. of India of a warrant ... Act. 15 C. W. N. 1033 : 39 C. 164 : 14

—the Evidence Act does not contain the whole law of evidence applicable to British India ; where therefore the records of a German Court were not authenticated in accordance with the Indian Evidence

Se. 3-4—contd.

Act but in the manner prescribed by the English Extradition Act, which is applicable in this country, the records were admissible under it, *abote case*.

—where a warrant under s. 4 of this Act had been issued by a M. when the fugitive was outside the local limits of the jurisdiction of the M. the warrant was at its inception without jurisdiction, *abote case*.

—a person against whom extradition proceedings are taken must under the Act be given a reasonable opportunity of adducing evidence, *abote case*.

—s. 3 gives the Govt. authority to empower any M. to enquire into a case who has jurisdiction to inquire into a crime of like nature and the fugitive need not be within the local jurisdiction, *abote case*.

Ss. 7-8.

—there is no provision in this Act making inquiry by a competent British Court in British India, into the truth of the accusation whether in the presence of the accused or otherwise, a condition precedent to the issue and execution of the warrant of the Political Agent under this sec. 7 Bom. L. R. 463 : 2 Cr. L. J. 439, 41 C. 400 : 18 C. W. N. 869 : 14 Cr. L. J. 673 : 21 Ind. C. 993 *fol.*

in all cases where enquiries are held by Ms. with a view to desirable and they should,

Political Agent under s. 7
with the Act is an executive
vision with such execution.

The power of the court to interfere otherwise than by way of revision *e.g.* under s. 491 C. P. C. is untouched by this decision. 19 C. W. N. 221.

an order of a Magistrate under s. 7 of this Act one and its
or 561 A of
12 : 117 I. C.

—where a warrant is sent by political Agent of a Native State to a Dt. Magistrate it is no part of the duty of the M. to ascertain whether *prima facie* case exists or not, the responsibility vesting with the issuing officer. 95 I. C. 275 : 27 C. L. J. 755 : 27 Punj. L. R. 312, 1926 Lah. 411.

—notwithstanding that s. 15 ousts the jurisdiction of the

Sec. 7-B—contd.

is no *prima facie* case against the petitioner or that the circumstances under which that officer was originally moved, do not justify him to exercise his power under the said sec. 36 P. W. R. 1908: 3 P. R. 1909: 9 Cr. L. J. 3.

—the M. cannot hold a person to bail to appear before a tribunal in a State to which the Act applies. The M. can bind over the prisoner to appear before himself, and then when the prisoner has surrendered to his bail, after receiving the warrant from the Political Agent, can proceed to execute it under s. 7 el. (2) or under s. 8 (4) can bind the prisoner over to appear at the time and place indicated in the warrant. 33 C. 1032: 4 Cr. L. J. 366.

—the M. cannot release the prisoner, who has been arrested on a warrant issued by the Political Agent, on bail and direct him to appear before the Political Agent on a certain date in the absence of endorsement authorising the M. to pass such order. 12 C. W. N. 602: 7 C. L. J. 171: 7 Cr. L. J. 198.

—the M. in British India to whom a warrant has been addressed under s. 7 of this Act, has the power to admit an arrested person to bail apart from the provisions of ss. 8 and 8A, *above case*.

—the offence of cheating is an extradition offence, so far as British India is concerned under the Indian Extradition Act not-
Treaty
310.

has not
1925 P. 112: 81 I. C. 175: 25 Cr. L. J. 657.

—a warrant signed by the Assistant British Envoy is not void. 1925 Pat. 112.
S. 10.

—this sec. distinctly confers on the M. in British India powers to make preliminary inquiries to obtain information given or complaint laid . . . are been committed by Native . . . Majesty within and beyond the . . . Foreign State, and to order warrant . . . accused persons. 8 Bom. L. R. 507: 4 Cr. L. J. 49.

—where the police arrests a person without warrant either under s. 54 g of the Cr. P. C. or s. 32 g of the Bombay City Police Act 1902 and the person so arrested is detained by a M. under s. 22 of the Extradition Act it is open to the M. to release the arrested person on bail under s. 10 (4), 26 Bom. L. R. 984.
S. 14.

—the H. C. has no power to order the transfer of an inquiry pending before a M. under provisions of s. 14 of the Extradition Act, XXI of 1879 as the competency of the M. to hold an inquiry under the sec. depends on the authorization of the Executive Govt. 15 C. W. N. 735: 2 Cr. L. J. 426.

S. 15.

—this sec. ousts the jurisdiction of the H. C. to inquire into the propriety of the warrant 7 Bom. L. R. 463 : 2 Cr. L. J. 439.

S. 18.

—s 18 only provides that the Act shall not work against the will of either party so as unduly to impose any liability on such party. It does not prevent their co-operation in a friendly action according to the committee of nations. 91 I. C 69 : 27 Cr. L. J. 37 : 1926 Sind 126.

INDIAN PENAL CODE.

S. 1. (Title and extent of operation of the Code)

—the Code does not contain specific repeal of penal law in force with the intention that offences omitted herefrom would not be exempted from penal consequences 41 C. 173, 211.

—offences committed prior to the operation of the Act are punishable under the old Acts and Regulations. 1 All. 599, *contra* : 2 C. 223 F. B.

—the Penal Code does not extend to the tributary Mahals of Mohurbhunja and Kheonjur. 8 C. 985 F. B., 7 C. 523, 20 C. W. N. 62, 16 C 667.

station of Bangalore

of British India. 10

Bom, 186, so also Civil station at waduwad. 14 Bom. L. R. 276. Dist. 9 Bom. 249.

the exercise of jurisdiction by the High Court was meant to be subject to the general legislative power of the Governor General in Council. 4 C. 172 P. C.

—If there is no general criminal jurisdiction then a person who has committed an offence in British territory cannot be arrested at a station on a railway line passing through a Native State. 24 I. A. 137, P. C., 13 Bom. L. R. 296, 304.

—a subject of the Native State is not liable to be punished under the I. P. C. for retaining stolen property within the Native State. 48 A. 687 : 96 I. C. 655 : 27 Cr. L. J. 991 : 24 A. L. J. 767 : 1927 All. 80.

S. 2. (Punishment for offences committed within the territories.)

Application of the section.

person shall be liable to otherwise etc" shall be read reservation with regard to 39 Cr. L. J. 460 ; 115 I

C. 100.

—this section makes the law exhaustive as to the punishment of any offence under any of its sections. 17 C. W. N. 297 : C. 433.

S. 2. Application of the section—*contd.*

—the object of the section is to declare the liability of all persons irrespective of rank, nationality, caste or creed, to be punished under this section. 25 A. 31.

Master and servant.

—a master is not criminally responsible for the unauthorised acts of servant. He is only criminally punishable who immediately does the act, or permits it to be done. 6 W. R. Cr. 60.

—a statute may impose criminal liability upon the master for the acts of servants. 9 C. 849, 10 Bom. L. R. 1051, 9 Bom. L. R. 967, 1059.

—but if a servant does that for which he is not employed, or for his own personal benefit, the master is not liable. 34 All. 116, 39 C. 344.

—in case of licensee he is generally held responsible for the acts of his servants. 24 Bom. 423, 2 Bom. L. R. 52, 34 All. 319.

—so also in case of Statutes passed for the benefit of public health and sanitation the master is generally held liable. 39 C. 692.

Construction of the statutes. (General.)

—the Code must be construed in its natural meaning but differences from prior English Law need not be assumed. 52 C. 197; 29 C. W. N. 181; 41 C. L. J. 240; 65 I. C. 47; 3 Pat. L. R. 1; 1925 M. W. N. 26; 26 Cr. L. J. 314; 1925 P. C. 1.

—nothing is to be regarded within the meaning of the Act which is not clearly and intelligibly described in the very words of the Statute itself. 8 C. 214; in interpreting the Act, full and accurate effect to every word used is to be given, 18 All. 364; the essence of the Code is to be exhaustive on the matters in respect of which it declares the law, and the Judge cannot disregard the letter of the enactment. 29 C. 707, 715, 4 Bom. L. R. 793, 776 P. C., full and natural meaning should be given to the provisions. 8 C. 637.

—the Code must be construed most favourably to the liberties of the subjects. 1 B. 308, 311.

—in interpreting the section of the book Reports of the Indian Law Commission may be referred to. 3 B. 241, 18 B. 616, 625, 7 A.

Council
Council
n. L. R.
objects

and reasons, double case, *contin.* 10 M. 610.

—marginal notes cannot be referred to. 26 All. 393, 400, 11 Bom. L. R. 576, P. C., 2 Bom. L. R. 918, 1 P. L. T. 11, 23 C. 55, 59.

—punctuation is to be taken into consideration. 17 Bom. L. R. 56, 12 M. L. T. 224.

—illustration does not control the section. 1 All. 34, 36, 15 B. 431, 24 C. W. N. 982, 32 C. L. J. 94, *contra*, it forms the part of the statute. 21 Bom. L. R. 558 P. C.

S 2. Construction of the statutes (General)—*contd.*

—every legislation is prospective only, it is retrospective also when expressly so provided, or when it relates to practice or procedure. 17 C. W. N. 889, 18 C. W. N. 804, 23 C. L. J. 506

—judicial order should be reasonably construed. 17 C. W. N. 565.

—where the words of the Act, as enacted, are clear, the Legislature only, and not the Courts, can correct any mistake involved in their use. 13 C. L. J. 250.

—in construing a Statute the Court will give much weight to the interpretation put upon it since its enactment. 23 C. L. J. 27, 7 C. L. J. 563 • 35 C. 701, *Ref.*

—where statute uses language of doubtful import and has been interpreted in a particular manner for a number of years, the explanation given to the obscure meaning may reduce the uncertainty to a fixed rule 34 C. 954 F. B.

—where two co-ordinate sections are apparently inconsistent an effort must be made to reconcile them. If impossible the later will prevail. Particular provision must always be strictly construed as against the general provisions. 25 C. W. N. 9.

—the rule of interpretations of all statutes is that the grammatical and ordinary sense of the words is to be adhered to where the language is clear and explicit the court must give effect to it, whatever may be the consequence 32 C. L. J. 303.

—there is a great deal of difference between disposal and decision of a case and a 'case' is something less definite than a 'suit'. 20 C. W. N. 1080, 18 C. W. N. 403, 15 C. W. N. 666.

—it is always dangerous to paraphrase an enactment and not the less so if the enactment is perhaps not altogether happily expressed. 18 C 23; 171 A. 122 P. C.

Reference to English cases if legal.

Sections 2 and 3 of the Indian Penal Code taken together
 continue to be
 a contrary
 special and
 alone and
 B.
 legitimate-
 construction
 of statute. The proper course is, in the first instance, to examine
 the language of the statute, to interpret it, to ask what is its
 natural meaning, uninfluenced by any consideration derived from
 the previous state of law; to begin with an examination of the
 state of law on the point, is to attack the problem on the wrong end;
 and it is a grave error to force upon the statute a meaning of the nature

S. 2. Reference to English cases if legal—contd.

—the criminal law applicable to India has been codified in the Indian Penal Code and the Criminal Procedure Code with the view that on any point specifically dealt with by it the law shall be ascertained by the interpretation of the language of those Codes. 45 M. 605 F. B.

—the Judges are to interpret the law as given to them by the legislature of this country and they must be guided and controlled by its enactments. 4 Pat. L. J. 72.

—rules relating to procedure under an Indian Act should not be interpreted by reference to discussion relating to another statute in England on different consideration even where the language of the two statutes is the same. 51 C. 745; 1924 Cal. 864.

—where the point to be decided arises under the law of India reference to English law is unnecessary. 28 C. W. N. 302; 34 M. L. T. 53; 51 C. 304; 26 Bom. L. R. 571; 22 A. L. J. 173 P. C.

—reliance on cases decided under the criminal law of England is liable to mislead though such cases may sometimes be referred to as illustrating principles. 19 C. W. N. 972; 30 I. O. 465; 16 Cr. L. J. 641.

—the cognate topics (on abetment) are dealt with in English law on such different lines that the cases under it are of little or no assistance in administering the law of India. 46 C. 607.

Jurisdiction.

—when jurisdiction is questioned, evidence is to be taken. 9 W. R. 79.

S. 3. (Punishment of offences committed beyond but which by law may be tried within the territories.)

—this section and section 4 relate to the Extra-territorial operation of the Code; this section enacts that if a person is to be tried for "an offence committed beyond the limits of the said territories" he shall be dealt with under the provisions of this Code. 10 B. H. C. R. Cr. 356, 30 P. R. 1889.

—where the theft took place within British territory but the accused was found in possession of stolen articles beyond British territory, held that the British Courts had no jurisdiction to try the accused for an offence under s. 411 I. P. C. 18 C. W. N. 1178; 24 I. O. 945; 15 Cr. L. J. 511.

India in Council
Act of Parliament
as ultra vires

S. 4 (Extension of the Act to the extra-territorial offences.)

—sec. 4 gives certain extra-territorial jurisdiction in respect of acts committed outside British India by a certain class of persons including the Indian subjects of His Majesty, but it does not affect the nature of the act. The act alleged must be punishable

S. 4. (Extension of the Act to the extra-territorial offences)
—*contd.*

under this Code. 47 B. 907; 25 Bom. L. R. 771; 1924 Bom. 51, 4 O. W. N. 1121.

—where a man is in British India and he is charged before a Magistrate with an offence under the Penal Code it will not avail him to say that he had been brought there illegally from a foreign country. 1928 Sind 161; 112 I. O. 573; 29 Cr. L. J. 1089 B. 35 B. 225 *fol.* (20 C. 20, 8 S. L. R. 18, 7 S. L. R. 126) *Dist.*

—the term, "Native Indian subjects of his Majesty" does not include servants of his Majesty 16 B. 178.

—Native Indian subject means only subjects *de jure* and not *de facto* 1 P. R. 1885.

—a D M addressed with a view to execute a warrant issued by a Political Agent of a Native State must act in pursuance of such warrant and cannot ascertain if any *prima facie* case exists. 2 P. R. 1909

—in a recent case an accused who had taken shelter in British India after committing an offence at Chandernagore was extradited in virtue of the treaty with France of 1815. 30 C. L. J. 24.

—the High Courts are empowered by the Charter to try European British subjects and servants of the King for offences committed in territories of Native Princes. 8 B. H. O. Cr. 22, 2 M. H. C. 444.

—no charge as to any offence provided in sec. 188 Cr. P. C. shall be enquired into by a Magistrate if there be any, certifies, 1

the sanction of the Local

L. R. 527, 3 Bom. Cr. C. 1

L. R. 513, 13 M. 428, 5 M. 2

should be taken timely. 4

word "found" in sec. 188 Cr. P. C. means not where a person is discovered, but where he is actually present. 6 B. 622.

—in the Nasik Conspiracy case it was held that where the accused was in the country and was charged with an offence under the I. P. C., it would not avail him to say that he was brought there illegally from a foreign country. 13 Bom. L. R. 296, 304; 1 Bom. Cr. C. 26, 34, 7 Bur. L. R. 83 *contra*. 24 I. A. 137 P. C.

—subsequent annexation does not change the jurisdiction. 2 W. R. 49, 34 A. 118, 33 All. 578, 8 A. L. J. 705, 34 All. 451.

—in case of breach of contract the accused can be tried only where the contract is entered into and breach is committed. 7 M. 354, 10 M. 21.

—the Presidency Magistrate has jurisdiction in admiralty cases. 3 Bom. L. R. 253, 25 Bom. 63, *dist.* 39 C. 487.

S. 5. (Certain laws not affected by the Act).

—offence punishable under special or local laws may be punishable under the Penal Code. 6 M. 249, 1 Weir 26, 8 B. L. R. 414, 26 P. R. 1915, but not so where the special Act intended to be complete in itself. 22 C. 131, 139, 1 M. 55,

S. 5. (Certain laws not affected by the Act)—*contd.*

Intention—*contd.* inferred. P. R. No. 49, but a
 : both the laws for the same
 : desirable that he should be
 W. N. 100: 5 C. L. J. 47.
 ment therein provided be not
 adequate then the accused should be convicted under this Code.
 11 P. R. 1874 but the conviction once inflicted under the Special
 Law should not be quashed. 8 W. R. 55.

—"special or local law" means such law as the Opium Act
 or the Gambling Act and not a vast system like the English
 Common Law. 1925 Rang. 345: 4 Bur. L. J. 147: 92 I. O. 737: 27
 Cr. L. J. 321.

—this section does not affect the Common Law principle
 introduced into the Presidency towns by which the High Courts
 have power to punish offences of contempt. 41 C. 173, 10 C. 109,
 P. C., 45 C. 169, 22 Bom. L. R. 368, 26 C. L. J. 345, 401, but not for
 contempt of a criminal court in Mofussil. 17 C. W. N. 1253, 1282.

—any rule prescribed by the Govt. under which the Bank
 Officers are directed to accept or return defaced coins does not affect
 the provisions of the I. P. C. 48 A. 603: 93 I. C. 154: 1926 All. 321:
 27 Cr. L. J. 426.

**S. 6. (Definitions should be understood subject to excep-
 tions).**

—illustrations cannot control plain meaning of the section,
 but they serve to explain the meaning of the section. 7 C. 132, 19
 Bom. L. R. 157.

—illustrations furnish some indication of the intentions of the
 Legislature. 15 B. 491.

S. 7. (Sense of expression once explained).

—one of several possible meanings should be ascertained by
 consulting the statute. 3 M. H. C. Ap. 11.

S. 8-52. (Definitions and general explanations).

S. 10. Man.

—man is used in contradistinction to woman. (1863) 4 C. P.
 374, 392.

S. 11. Person.

—person is sufficiently wide to include the Government as a
 representative of the whole community. 1 Bom. 610, 622.

S. 17. Government.

—a Collector acting in the management of a Khas Mehal is
 also Government. 26 C. 153.

S. 19. Judge.

—a person other than one who is officially designated as a
 Judge such as Magistrate is a Judge only when he exercises
 jurisdiction in a suit or proceeding, that is to say, he is a Judge

S. 19. Judge—*contd.*

only so far as that suit or proceeding is concerned but he is not a judge when he has no seisin of the suit or proceeding in which he can give a definite judgment, and it is clear from s. 4 (2) of the Cr. P. C. read with this section. 93 I. C. 963 : 27 Cr. L. J. 499 : 7 Pat. L. T. 504 : 1926 Pat. 214 : 5 Pat. 110.

—legal proceedings in s. 19 mean proceedings prescribed by law in which a decision is given. 1929 Mad. 175 : 114 I. C. 817 : 30 Cr. L. J. 365.

S. 21. (Public servant, who is) ?

cl. 4—persons executing any judicial process, 2 B. L. R. 21 F. B. or warrant of arrest, 22 C. 596, 759 are public servants.

cl. 6.—there must be some case or matter existing in dispute or controversy between the parties. 6 C. W. N. 295.

cl. 7.—convict warders also come under this clause. 7 W. R. 99, P. R. No. 22 of 1908. 26 Bom. L. R. 267 : 83 I. C. 342 : 25 Cr. L. J. 1382.

—the warder of a jail is a public servant. 1929 Lab. 631 : 119 I. C. 762 : 30 Cr. L. J. 1103 : 1929 Cr. C. 190.

cl. 8.—Revenue and Police patels, 21 B. 517, persons appointed by Govt. Solicitor to conduct prosecutions, 3 C. 497, the officers of the Society for the Prevention of Cruelty to Animals. 3 C. L. J. 475, the *gorast* of a village. 26 All. 542, come under this clause.

—an agent of the Society for the Prevention of Cruelty to Animals appointed as a member of the City Police under Act III of 1888 is a public servant. 46 M. 90 : 69 I. C. 464 : 23 Cr. L. J. 736, 3 C. L. J. 475, *Ref.*

cl. 9—the word "officer" in this clause means a person employed to exercise a delegated function of Govt. 12 B. H. C. 1, 18

superintendent of the Collector, 20 C. 190, a *talukdar*, 2 M. W. L. 148, a supernumerary peon in the Collector's Court remunerated by fees, 7 B. H. R. 416, are public servants; a manager of an estate under the Court of Wards is a public servant, 21 All. 127, *contra*. 28 C. 344, but a peon employed by such a manager is not. 7 M. 17.

—a *talukdar* is a public servant. 48 M. 867 : 192 Mad. 1093 : 49 M. L. J. 192.

S. 21. (Public servant, who is)?—*contd.*

—any person who chooses to take upon himself the duties and responsibilities belonging to the position of a public servant is a public servant, 8 All. 201, whatever legal defects there may be. 15 W. R. 27 : 7 B. L. R. 446.

—a Municipal Inspector, 13 M. 131, a Sanitary Inspector 21 M. 428, a karkun (1876) unrep. Cr. C. 117, a volunteer serving in a Tahsildar's office, 8 All. 201, and a Zamindar's karnam, 15 M. 127, are held to be public servants.

—the definition includes a tax-collector in Municipality. 1 Pat. 423 : 3 Pat. L. T. 559 : 1922 Pat. 532.

—where a person who made the complaint was a conservancy overseer and purported to act in the discharge of his official duties under the Calcutta Municipal Act he was a public servant. 34 C. W. N. 449.

—the patwarri of a village entitled to collect cesses as if they were land-revenue is a public servant. 68 I. C. 157 : 23 Cr. L. J. 557 : 1923 Nag. 146.

Who is not public servant.

—a receiver appointed under the Land Registration Act is not a public servant. 29 C. 236.

—a lessee of a village undertaking to keep an account of Forest revenues, 12 B. H. C. 1, a Mysore Policeman, 1 Wair. 432, a carter employed by the Government 7 M. 18, a clerk employed by allowance, 32 C. 664, a Podda 176, an arbitrator, appointed by the parties to a proceeding under sec. 145, Cr. P. C. 30 C. 1084, a villager required to bring an accused person into a police-station in arrest under sec. 11 of the Burma Villages Act, 2 U. B. R. 122, a Municipal Water Tax-Collector 1 A. L. J. are not Public Servants.

S. 22. (Movable property).

—corporeal property is property perceivable by the senses in contradistinction to incorporeal rights as obligations of all kinds. 1 Weir 28, 4 M. 228. In a case where the question was whether a letter received by post could be considered movable property of the receiver it was held that the accused could not be convicted of dishonest misappropriation of property with respect to his retention of a letter. 40 All. 119.

—any part of the earth or any component part of the soil inclusive of stones and minerals, severed from the earth is movable property. 15 B. 702, 27 M. 531, F. B. 10 M. 255 overruled.

S. 23 (Wrongful gain or wrongful loss.)

—"by unlawful means" refers to an act which would render the doer liable to an action or prosecution. 2 L. B. R. 216 F. B.

—using a turban by the pledgee of it is not wrongful gain to him nor wrongful loss to the owner; to constitute wrongful loss or gain the property must be lost to the owner or he must be wrongfully kept out of it. 3 M. H. C. Ap. 6

S. 23. (Wrongful gain or wrongful loss)—*contd.*

—“wrongfully kept out of any property” means *deprived* of the benefit arising from the possession even temporarily and not keeping out of possession with the object causing trouble or anxiety. 25 C. 416

—college-fees are held to be property within the meaning of this section. 15 All. 210.

—forcible and illegal seizure of bullocks of a widow in satisfaction of debt due to her husband is a “wrongful loss.” 5 W. R. 63.
—pounding of a cattle even if not merely permitting cattle

—snatching away a document lying beside the arbitrator preventing a witness for referring to an endorsement thereon does not cause “wrongful loss” or “wrongful gain” 3 M. 261.

—breach of condition to sell a certain thing at a certain price after purchase does not constitute wrongful loss or wrongful gain to any one. 22 W. R. 82.

S. 24. (Dishonestly)

—this definition of the word “dishonestly” is not exhaustive. The wrongful obtaining of an acquittal is very distinctively the obtaining of an advantage and brings the case within the definition of “dishonestly” in the sec. and where the accused used a forged document for that purpose he could be convicted under s. 471 I. P. C., 1927 Pat. 60: 30 Cr. L. J. 236; 113 I. C. 712; 9 Pat. L. T. 800.

—the word “intention” used in the sec. has reference to the dominant motive without which the action would not have been taken. 2 Bom. L. R. 986, 25 B. 202.

—wrongful loss or wrongful gain need not be permanent but might be temporary. 68 I. C. 157.

—“gain” means material gain. 1925 Rang. 9.

S. 25. (Fraudulently).

—the words “fraudulently” should be confined to transactions of which deprivation of the property forms a part. 25 C. 512 F. 8.

—the word intent by its etymology seems to have metaphysical allusion to archery and implies aim and has reference to

... meaning, it may or may not be in the context 25 B. 512, 521.

... and to obtain an advantage 3.

... C. 313, 322, 22 B. 708, 13 B. 515.

... and consequently injury to intended infringement of possessors, he need not be 1926 Lab. 385.

S. 25. (Fraudulent)—*contd.*

—a general intention to defraud without the intention of causing wrongful gain to one person or wrongful loss to another is sufficient to support a conviction. 9 O. 53, 96 I. C. 850: 1926 Mad. 1072: 27 Cr. L. J. 994.

—defraud involves two conceptions, deceit and injury to the person deceived; so where a person added his name as an attesting witness in a registered document which was required by law to be attested his act was not fraudulent or dishonest and he was not guilty of forgery. 33 C. 75, (1915). M. W. N. 278.

—producing a false belief, by filing a false *sanad*, in the mind of the Settlement officer that the accused is entitled to the dignity of *Loskar* does not constitute intention to defraud. 10 C. 584.

—there is distinction between the meaning of the term "fraudulent" and "intention to defraud". The latter denotes an intention to produce a false belief as evidence to support

S. 26. (Reason to believe).

—one has "reason to believe," when the circumstances are such that a reasonable man would be led by a chain of probable reasoning to this conclusion although circumstances may fall short of carrying absolute conviction. 37 P. R. 1888.

S. 27. (Property in possession of clerk or servant).

—this section abrogates the distinction made by the English law between "possession and custody." But it does not express the complete thought of the Legislature on the question of possession. 44 C. 477.

—the word "possession" in the sec. shows that unlike the English law the Indian Law does not recognise the distinction between "possession" and "custody." Possession to be punished under the criminal law must be possession with knowledge. 1925 Lab. 272: 10 Lah. L. J. 408: 9 Lab. 531: 29 Punj. L. R. 629: 109 I. C. 209: 29 Cr. L. J. 481.

—when an article is found in a house not in the exclusive

—a permanent mistress may be regarded as a wife and articles in the possession of such a mistress may be presumed to be in the possession of the man. 20 P. R. 1914.

—where there is nothing to show that a pistol is a sort of article that one can reasonably expect to be for sale in the shop of the accused, possession by servant of the accused of the pistol is not possession on account of the master. 69 I. C. 457: 23 Cr. L. J. 729: 1923 All. 33.

S. 28. (Counterfeit).

—when the coins counterfeited are such imitation of the genuine coin as might deceive people on account of the resemblance, the presumption referred to in explanation 2 arises; 30 All. 93.

—altering used stamps in order to resemble genuine unused stamps amounts to counterfeiting. 23 Cr. L. J. 289.

—counterfeiting trade mark when complete. 19 C. W. N. 957.

S. 29. (Document.)

—an instrument though not signed by all parties thereto fulfils the definition of document. 41 M. 589.

—a writing which is not legally evidence may yet be a document if the parties framing it believed it to be and intended it to be evidence of such matter. 10 W. R. 61, 2 B. L. R. 12.

—letters or marks imprinted on trees and intended to be used as evidence that the trees had been passed for removal by the ranger, are documents within the meaning of this sec. 27 Bom. L. R. 599; 1925 Bom. 327; 87 I. C. 838; 26 Cr. L. J. 1014.

S. 30. (Valuable security.)

—document not stamped as required and therefore
by: 7 M. H. O.
valuable security,
it may not be
to be valuable
security. 25 C. 207.

—a Kabuliyat is a valuable security even if its term has expired. 88 I. C. 283; 1925 Nag. 337; 26 Cr. L. J. 1118.

—a document though not signed by all the parties thereto is a valuable security if it imposes an obligation on the actual executors. 41 M. 589.

—a decree of the Civil Court cannot be said to be a valuable security. Nor can court be said to deliver any property when it furnishes a party with a copy of a decree obtained by him. 28 C. W. N. 414; 39 C. L. J. 123; 81 I. C. 810; 25 Cr. L. J. 1034.

—a counterfoil of paying-in-slip which purports to be an acknowledgment of receipt of a sum of money by the Bank comes within the definition of "valuable security." 29 C. W. N. 862; 89 I. C. 248; 26 Cr. L. J. 1304; 1926 Cal. 425.

S. 32. ("Acts" include "egai omissions.")

—"omission" is used in the sense of intentional non-doing.
1 Weir. 495.

—when the law imposes a duty on a person, his illegal
20 B. 394.
threat of cholera
defined by s. 43
C. 74 : 25 Cr. L. J.

find a place in the
of India does not
it, but such neglect
injury to person
special cases) or

such neglect as endangers life or property. (see. 279 to 289, I. P. C. and ss. 102 and 128, Indian Railways Act). 1925 S. 233 : 18 S. L. R. 199 : 27 Cr. L. J. 257 : 92 I. C. 433.

—where a person joins with another to assault a third person and sees his companion in the course of the action which may reasonably be expected to bring about the death of the deceased and takes no steps to interfere with that action or to assist the deceased such an act is an act or omission rendering him liable to conviction under s. 304 read with ss. 32 and 34 I. P. C., 1929 Pat. 65 : 114 I. C. 222 : 30 Cr. L. J. 276 : 9 Pat. L. T. 826, 52 I. A. 40 : 48 M. L. J. 543 P. C.

S. 34. (Acts done by several persons in furtherance of common intention.)

—s. 34 I. P. C. refers to cases in which several persons do an act and intend to do an act. It does not refer to cases when several persons intend to do one act and some one or more of them do an entirely different act. 86 I. C. 475 : 26 Cr. L. J. 827 : 1925 Cal. 913.

—the expressions "that act" and "the act" in the latter part
"criminal act"
I. C. 122.
c. have not
9. 1929 Pat.

the meaning
I Cal. 643, 28

application
949 : 8 Lab.

that one in a
increase the
who were not
149.
he operation
II.

S. 34. (Acts done by several persons in furtherance of common intention)—*contd*

—s. 34 I. P. C. has no application in the construction of sec. 398 I. P. C. 52 Bom. 168 : 29 Cr. L. J. 383 : 1928 Bom. 52 : 107 I. O. 705 : 30 Bom. L. R. 88.

—to apply this sec. there must be participation in actioe to commit the crime with a common intention although the different accused might have taken different parts. 35 C. W. N. 463. .

—acts done in furtherance of common intention make all equally liable for the results of all the acts of others. 52 C. 197 : 29 C. W. N. 181 26 Cr. L. J. 431 : 1925 P. C. 1 : 85 I. C. 47. 41 C. L. J. 240 : 3 Pet. L. R. 1. Cr. : 6 Pat L. T. 169 : 1925 M. W. N. 26 : 27 Bom L. R. 148 : 23 A. L. J. 314 P. C. , 90 I. C. 154 : 26 Cr. L. J. 1498, 104 I. C. 630 : 28 Cr. L. J. 854 : 28 Punj. L. R. 583, 98 I. O. 113 : 27 Cr. L. J. 1265 : 1927 Sind 85.

—the question of intention is a question of fact and it must be decided on the proved facts of that case. 1931 Cr. O. 17 : 1931 Rang. 1, F. B.

—s. 34 does not create a distinct offence, it only lays down a principle of liability. Under this sec when a criminal act is done by several persons each is liable as if he did it alone provided the Act is done in furtherance of the common intention of all. 28 C. W. N. 170 : 38 C. L. J. 411.

—the provisions of this section lay down a rule of law applicable to a case where a criminal act is done by several persons of whom the accused charged thereunder was one and not when the act is committed by other persons than the accused. 50 C. 41 : 74 I. C. 267 : 24 Cr. L. J. 763 : 1923 Cal 453.

..... I.P.C.
..... doing
..... cause
..... to do
..... 127 Cal.

—this section is to meet the case where it is difficult to prove exactly what part was taken by each member. 1 L. B. R. 2, 33.

—as the purpose is common so must be the responsibility. 3 B. L. R. P.C. 44, 45.

—everyone must be taken to have intended probable and natural results of the combination of acts in which he joined. 1 L. R. 233.

—but a party not cognizant of the intention of his companions is not liable. 19 M. B. L. R. 264.

—all are guilty of the principal offence and not of abetment. 3 L. B. R. 264 *Contra*. 13 B. L. T. 44.

—where several persons assault a man and as a result of the blow given by one of them the victim dies and it is not possible to ascertain from the evidence as to which of the several gave the fatal blow, all must be convicted for culpable ..

S. 34. (Acts done by several persons in furtherance of common intention)—*confd.*

94 I. C. 363; 27 Cr. L. J. 619; 5 Cr. 433, 1930 Lah. 950; 1930 Cr. C. 1046.

—where the deceased had been assaulted by several persons and the evidence on the record does not show who struck the final blow the court can hold the whole lot of assailants guilty of murder. 1929 Nag. 325; 30 Cr. L. J. 944; 118 I. C. 473; 1929 Cr. C. 529, even if it was not proved that all the accused actually participated in the offence they are guilty of the common offence by virtue of sec. 34 I. P. C. 1930 Lah. 338; 1930 Cr. C. 355; 12 L. L. J. 33.

—where two persons joined in committing robbery and in that process killed a person with a gunshot but there was no evidence as to which of them fired while both were armed with guns, both of them were constructively liable for murder but the maximum sentence need not be imposed. 1929 Lah. 292; 11 Lah. L. J. 20.

—but where two persons fire at another and one only actually hits and kills him, the other is not guilty of murder but of attempt to murder. 41 C. 1072, 15 C. W. N. 222 (note), 24 P. R. 1919.

—any sudden and unpremeditated act done by a member of an unlawful assembly would not render all the other members liable therefor unless it was shown that the assembly had such apprehension. 11 All. 347 F. B., 7 A. W. N. 236.

—common intention must be proved. 3 P. L. W. 120, 16 C. L. J. 440, 9 A. L. J. R. 180, 10 L. B. R. 117, 25 C. W. N. 24.

—where each of several persons took part in beating and caused death, each was convicted of murder. 24 W. R. Cr. 5, 2 P. R. 1887, 16 C. W. N. 909, 99 I. C. 90; 28 Cr. L. J. 58, but where some assaulted while one gave a blow on the head causing death in the absence of proof of common intention others cannot be convicted of murder. 19 M. 483.

—where the accused fighting over the division of property were not acting in concert, none of them could be convicted of murder. 17 A. L. R. 1095.

—where five persons armed with dangerous weapon attacked another and as a result of a single blow delivered by only one of them the victim died and . . . actually gave the blow. all

adrs. 304 read with sec. 34
—read with sec. 109 or rather
a. . . . C. v. Lah. L. J. 385; 1925 Lah. 117.

—when three persons armed with dangerous weapon went together with a view to assault a person they must all be deemed to have the common intention and this sec. will apply. 94 I. C. 134; 27 Cr. L. J. 566; 1226 Lah. 361; 27 Punj. L. R. 244, 8 Lah. L. J. 189

H. C. on appeal to alter the
the help of a 34 I. P. C. on the
some other person in pursuance
: 5. A. 133 Cr.

S. 34. (Acts done by several persons in furtherance of common intention)—*contd*

—there is no reason why a person who is charged under s. 302 I. P. C. cannot be convicted, although he is not charged with it under sec 114 read with sec. 302 I P. O. Even though the accused have been charged with offence under as 148, 149 and 307 I. P. C. It is open to the court to convict them of an offence under sec. 307 read with sec 34 or 114 I P. C. 26 Bom. L. R. 954 ; 1924 Bom. 502.

—where three persons armed with revolvers went to a Post Office with a common intention to rob the Post Master and if necessary to kill him and if the Post Master's death resulted from a shot fired by one of them in furtherance of their common intention each will be guilty of murder under s. 302 I. P. C. whichever of the three fired the shot. 28 C. W. N. 170; 81 I. C. 353; 25 Cr. L. J. 817 F. B.

—where four persons joined together to abduct a sleeping girl and proceeded to do so armed with weapons, a court may assume that they had knowledge that it might be necessary to use the weapons and when grievous hurt was caused to the rescuers, all of them must be regarded as responsible for its grievous nature. 88 I. C. 273 . 26 Cr. L. J. 1105 . 1925 Lah 565.

—where four persons went armed with deadly weapon fully prepared to commit murder, each will be equally guilty of murder although a particular individual did not take part in the assault which caused the death. 89 I. C. 718; 26 Cr. L. J. 1406.

—where in an assault by the accused who acted jointly in attacking a certain party two murders were committed and there accused to commit each of the was committed in furtherance of caused are guilty under sec. 302 . 561 : 83 I. C. 485 : 1924 Cal. 625.

—If a number of latities and fracture on him all of them are prove which of them (1924) All. 78.

—a conviction under s. 325 read with sec. 34 in respect of assaults on other persons than the deceased is not sustainable.
6 L. L. J. 630.

—where a number of people went to the house of the complainant to ask him to eat his gun and shoot his wife and while

—where there is no evidence as to which of the accused dealt the blow which caused the grievous hurt but common intention was proved, both may be convicted under s. 325 I. P. C. 81 I. O. 48: 25 Cr. L. J. 560.

—where an attack by several persons was made with common intention of giving thrashing but which

S. 34. (Acts done by several persons in furtherance of common intention)—*contd.*

one of the assistants having used to apply to the other, accused present party was only to give a thrashing
2 O. L. J. 54.

—but where two of three accused refrained from using a deadly weapon and causing grievous hurt while the third killed the deceased but where they had the common intention they must be presumed to have intended to have caused grievous hurt. 85 I. C. 822; 24 Cr. L. J. 708; 1923 Lah. 326.

—where the death of the accused was the result of the cumulative effect of the injuries caused by all the four assailants conjointly the case is within s. 34 I. P. C. and all of them are liable for murder. 4 Lah. L. J. 277; 1922 Lah. 260, 95 I. C. 594; 27 Cr. L. J. 818; 27 Panj. L. R. 347.

—in order to justify the application of sec. 34 evidence of some distinct act by the accused which can be regarded as part of the Criminal Act in question, must be required. 1923 M. W. N. 800; 17 L. W. 21.

—where in the course of a commission of a dacoity some slave used deadly weapons s. 34 applies to the case. 68 I. C. 817; 23 Cr. L. J. 593.

—in order to justify the application of s. 34 evidence of some distinct act by the accused, which can be regarded as part of the Criminal Act in question, must be required. 72 I. C. 360; 24 Cr. L. J. 360; 1923 Mad. 187.

the intention

original act was
2 Bur. L. J.

142; 1923 Rang. 268.

—in order to bring the case within s. 34 it is necessary to come to a definite finding that the accused were acting in common intention. If it is not possible to find that they were acting in common intention it is not possible to apply s. 34. 149 I. C. 70; 24 Cr. L. J. 383.

—where the accused were acting in common intention and the act abetted and not a probable consequence of the abetment, accused is guilty of abetment only. 10 L. B. R. 99, the common intention must cover the act done by all the several persons. (1907) U. B. R. 5 P. C.

—the accused who were members of a gang, being before the murder, separated from other members of the gang who committed murder, could not have any common object. 17 Bom. L. R. 906, 3 Bom. Cr. C. 118.

—so also where out of four men committing robbery two went from house to house bullying and illtreating the inmates while the other two kept guard on the house-top and one of them shot and

S. 34. (Acts done by several persons in furtherance of common intention)—contd.

killed one of the villagers, held that the act being of one person only could not make others liable. 21 P. R. 1919.

—where some persons formed into an unlawful assembly with the common object of compelling an Excise officer to abandon the search of certain house and after achieving that end assaulted the officer, separate conviction under ss. 147 and 353 were legal. 1928 Pat. 115. 9 Pat. L. T. 167: 105 I. C. 591: 6 Pat. 828: 29 Cr. L. J. 79

—where both the accused had armed themselves with deadly weapons they must know that in case of opposition the weapons would be used and in all probabilities grievous hurt would be caused. 24 P. R. 1919.

—all are severally responsible as though the offence had been committed by each alone and so separately punishable. 44 C. 1025.

S. 35. (When such an act is criminal by reason of its being done with a criminal knowledge or intention).

—it is made clear by the section that where a certain number of persons join in an act which is criminal only by reason of its being done with a certain knowledge or intention, each person is liable for the act to the extent of his knowledge or intention; the Court or the jury have to consider what is the knowledge or intention with which each person joined in the act. 31 C. W. N. 314: 45 C. L. J. 131: 100 I. C. 718: 28 Cr. L. J. 834: 1927 Cal. 324.

S. 36. (Effect caused partly by act and partly by omission.)

—when an offence is the effect partly of an act or partly of an omission it is an offence only. 28 C. W. N. 170: 38 C. L. J. 411.

S. 37. (Co-operation by doing one of several acts constitutes the offence.)

—when an offence is committed by means of several acts each person intentionally committing one of those acts singly or jointly with other, commits the offence. 28 C. W. N. 170: 38 C. L. J. 411.

S. 37. (Co-operation by doing one of several acts constitutes the offence)—*contd.*

1 : 26 Cr. L. J. 431 : 1925 M. W. N. 26 : 27 Bom. L. R. 148 : 23 A. L. J. 314 P. C.

—when the accused act in concert they are all equally guilty of the offence. 35 A. 506 : 11 A. L. J. 804, 14 C. L. J. 615 : 21 I. C. 663, 15 Bom. L. R. 303 : 19 I. C. 331 : 14 Cr. L. J. 235, 2 Bom. Cr. C. 54, 40 A. 686 : 47 I. C. 805 : 19 Cr. L. J. 953.

—where
of several acts means
commission of in the
accused commi all the
67 : 18 Cr. L. J L. R.

S. 38. (Persons concerned in same act may be guilty of different offences).

—where the circumstances are different the accused may be guilty of different offences. 2 A. W. N. 23. for different
on
ent
R.
1 :

S. 40. (Offence).

—this sec. is not correctly worded, a thing is not punishable, but a person is punishable. 5 B. 338, 7 A. 67, p. 71, (1866) 3 M. H. C. Ap 11.

—"thing" means an aggregate of acts or omissions (1866). 3 M. H. C. Ap 11.

—an attempt to commit an offence is itself an offence within the definition of offence. 17 A. 120.

—order under sec. 55 of Cr. P. C. does not come within the definition of an offence. 7 A. 67 p. 69, 8 C. 331.

since is not a conviction for
C Cr. 81.

construed rigidly and so
P. C. covers only offences

include an offence under
the Malabar Martial Law

law in its widest sense.
visions as are prohibited
under appropriate penal provisions by authority of the State.
Morality and criminality are far from co-extensive. 1931 P. C.
91,

S. 41-42. (Special Law and Local Law).

—whenever there is intention to apply criminal law to acts provided by particular Statutes that intention is made clear by express words. 22 C. 131.

Ss. 41-42. (Special Law and Local Law)—contd.

—special laws are laws such as the Excise, Opium and Cattle Trespass Acts creating fresh offences which are not provided here.
7 L. B. R. 63

—a local law does not necessarily include all rules made under the provision of a local law. 23 P. R. 1894

S. 43. (Illegal, legally bound to do.)

—the word "illegal" has an extensive meaning including anything and everything which is forbidden by law and constitutes an offence and furnishes the basis for a civil suit ending in damages. 1929 All 935; 1929 Cr. C. 563; 1930 A. L. J. 242; 120 I. C. 205; 31 Cr. L. J. 12

—the word "illegal" has been given a very wide meaning and it has the same meaning as "unlawful." A pleader putting an irrelevant and indecent question to a witness is guilty of an unlawful act because such questions are forbidden by ss. 151 and 152 Evl. Act. 1930 Pat 593; 9 Pat. 725.

—submitting a false return to the superior officer and also making a false statement to the same effect in a revenue enquiry was held to be illegal. 14 M. 484, 4 M. 144 *Diss.*

S. 44. (Injury).

—"injury" is an act contrary to law (1864) 2 M. H. C. 158.

—unlawful detention of a cart at toll-gate amounts to 'injury.' 1 Wair 447.

—threat of a decree which is not capable of being given effect to is a threat of harm to an individual in his person, reputation or property. 27 C. W. N. 479.

—"property" means some thing in existence and cannot be applied to reasonable expectations of pecuniary benefit. 21 M. 74 F. B.

—it has been held by some H. Cs. that the death of the husband does not cause an injury to the wife, so she is not entitled to compensation. 21 M. 74, 76 12 M. 352, (1895) Cr. R. 26 of 1895, Rat. Un. Cr. C. 763, *Contra.* 1898 17 P. R. F. B.

—false charge before the Police may subject the accused to a very substantial injury under this sec. 5 C. 281.

S. 49. (Year' months).

P. D. 233.

S. 51. (Oath).

—an oath is a religious asseveration by which a person nounces the mercy and imprecates the vengeance of heaven if he not speak the truth. (1786) 1 Leach 430.

S. 52. (Good faith).

—the law does not exact the same care and attention from all persons regardless of the position they occupy. 12 Bom. 377, 393.

—a police officer charging a person with the theft of his father's house without the taking trouble of getting any credible information as to whether it was his father's house or not, was held to have acted without exercising due care and attention. 10 W. R. 20.

—the degree of care requisite will vary with the degree of danger which may result from the want of it; where the peril is the greatest the greatest caution is necessary. M. and M.

—a man uneducated in matter of surgery when operates an internal pile with an ordinary knife and causes death he does not act in good faith, although he performed similar operations previously. 14 C. 566

—good faith requires not logical infallibility but due care and attention under the circumstances of each case. 9 Bom. L. R. 230: 31 B. 293.

—mistake of fact under subscription is not acting in good faith. 11 P. R. 1898.

S. 53. (Punishment).

—the maximum sentence whether of fine or of imprisonment represents the sentence to be inflicted in extreme cases. 1929 All. 919 1929 Cr. C. 617: 1930 A. L. J. 26: 120 I. C. 435: 31 Cr. L. J. 88.

—to shut a man up in prison longer than is really necessary is not only bad for the man himself, but is useless piece of cruelty and economically wasteful and a source of loss to the community 1 U. B. R. 330.

—the punishment of penal servitude, which is a substitute for transportation is applicable only to Europeans and Americans. 19 M. 483.

—where the Code provides imprisonment and fines the sentence should include some period of imprisonment, whatever may be. 1 B. H. C. 4, 34, 39, 2 W. R. 33, 16 W. R. 17, 1 Bom. L. R. 414.

—when the Penal Code directs that in addition to substantive sentence of imprisonment there shall also be a sentence of fine for an offence, it does not mean that a fine must be tacked on to a sentence of imprisonment. The correct interpretation is that, in such cases, punishment of fine alone cannot be awarded but there must be a sentence of substantive imprisonment. 83 L. C. 481: 26 Cr. L. J. 1: 1925 Oudh. 298.

—it is only in very exceptional circumstance that it is suitable and appropriate to inflict a fine as well as a substantive term of imprisonment i.e., when justice of the case will be met by inflicting both. 35 C. W. N. 519.

—it is bad in law to impose a daily fine in anticipation of the commission of a continuing offence. 83 I. C. 717: 25 Cr. L. J. 1357, (27 C. 565, 37 C. 672, 22 B. 766) *fol.*

S. 53. (Punishment)—*contd.*

12 W. R. 47.

S. 56. (Sentence of *Europeana* and *Americana* to penal servitude.)

—punishment of penal servitude is only applicable to Europeans and Americans. 19 M. 483.

S. 59. (Transportation instead of imprisonment.)

—sec. 59 authorises a sentence of transportation for life but for a term exceeding the maximum

tion is specially provided
sent for a term of seven
its a transportation as a

—when the court has an option in determining the duration of the term of imprisonment it has no option in determining the terms of transportation. 1 All. 43 F. B.

—this section applies to only cases in which the offender may legally be sentenced to imprisonment for seven years. 9 W. R. 6, and for one offence only, 2 W. R. 1, 3 W. R. 44, 63 P. R. 1866, 21 P. R. 1901, 14 P. R. 1886

—the proper procedure is to pass the sentence of transportation for a term exceeding 7 years. 30, 35.

of imprison-
L. R. Cr. 5,
nce of trans-

portation for shorter period than seven years can be passed. 8 W. R. 2, 4 L. B. R. 65.

—this section does not apply to special or local laws. 11 M. L. J. R. 127, 1 Weir 30.

default of payment of fine can-
under this section. 5 M. 23,
116, 1 L. B. R. 292, overruling

S. 61. (Sentence of forfeiture of property.) *Repealed.*

—as to the distinction between, forfeiture and
12 B. L. R. 167, 181.

S. 61. (Sentence of forfeiture of property.) - Repealed—contd.

—forfeiture cannot affect the share of the person not implicated. 4 M. I. A. 246 P. C.

—forfeiture of the estate governed by the law of primogeniture prevailed. 13 B. L. R. 445.

S. 62. (Forfeiture of property of offenders). Repealed.

—when the act of the accused was entirely his own act arising out of his own bad conduct and would be disapproved of and discouraged by his heirs and relatives no good effect would be produced by the forfeiture of property. 23 P. R. 1900.

—where ancestral property is concerned the order of forfeiture maintains only during the life of the accused and does not affect the heirs. 7 P. R. 1909, 18 P. R. 1907.

—forfeiture takes effect from the date of the commission of the offence and an attachment after that is invalid. 8 B. L. R. 83 *contra*. 2 Hay. 117, 562.

—the special sentence of forfeiture should only be inflicted in rare cases, 12 W. R. 17 and should be inflicted only for offences of the most atrocious kind and committed under the aggravated circumstances. 12 W. R. 17, 39 P. R. 1866, 23 P. R. 1900. Dacoity or theft is offence of such nature, 39 A. L. J. R. 375 and offences of a political nature against the estate or affecting the safety of public or some section of it, 7 P. R. 1908, 36 All. 395 and before passing order as to forfeiture, the position and means of the accused should be taken into account. 21 P. R. 1903.

—the order of forfeiture should be made at the time of trial and not subsequently. 1 N. W. P. 151.

S. 63. (Amount of fine).

—the description of fine prohibited by the section is a fine which it would be impossible or very difficult for the accused to pay, wholly disproportionate to the character of the offence. 7 W. R. 37, 18 P. R. 78, 20 P. R. 1895.

—where the accused belonged to a very humble walk of life and sentence of imprisonment and fine was passed against him, sentence of fine was found in revision to be unnecessary. 30 Punj. L. R. 168.

—It is the Court of Sessions and the High Court that can inflict fines to an unlimited extent. 7 W. R. 37.

—an order for daily fine is illegal. 27 C. 565, 18 W. R. 44, 20 W. R. 64, 25 W. R. 9.

—on conviction for a joint offence, the sentence must impose a specific fine on each prisoner. 5 M. H. C. Ap. 5, 1 Weir 30.

S. 64. (Sentence of imprisonment for non-payment of fine).

—this section was intended to provide for the answer of imprisonment in default of payment of fine in all cases in which fine could be imposed. 23 M. 238.

S. 64. (Sentence of imprisonment for non-payment of fine)—
contd.

—the words "imprisonment as well as fine" include (a) offence punishable with imprisonment or fine in the alternative and (b) offences punishable with imprisonment or fine or both cumulatively. 22 M. 238.

—it is not imperative to award a term of imprisonment in default of payment of fine 1 Weir 31, 30 P. R. 1878.

—imprisonment should be in proportion to the fine, (1855), S. J. L. B 358.

S. 65. (Limit of imprisonment for non-payment of fine.)

—the provisions of ss. 65 and 67 equally apply to punishments under special laws like the Bombay Gambling Act. 91 I. C. 394; 27 Cr. L. J. 90; 1926 Sind 144.

—in a case under sec. 510 in default of payment of fine of annas two maximum punishment of imprisonment was held to be six hours 1 Weir 31.

—in a case under Town Nuisance Act, in default of fine of Rs 8, the maximum punishment of imprisonment was held to be two days. 22 M. 238.

—in a case of assault, sentence of imprisonment for one month in default of payment of fine of Rs. 50 was held to be illegal. 16 W. R. 42.

—"punishable with imprisonment as well as fine" does not cover the case of punishment of fine only which is dealt with in sec. 67. 22 M. 238, 1898 P. J. L. B. 494.

—sec 33 Cr. P. Code does not authorise a Magistrate to pass a sentence in default of fine. 10 M. 165 F. B. overruled.

—a sentence default of payment of fine sentence for the offence is one year's imprisonment. 81 I. C. 985; 25 Cr. L. J. 1161; 1925 Oudh 109.

S. 66. (Description of imprisonment for non-payment of fine.)

—if the offence is punishable with rigorous imprisonment then the additional imprisonment must be rigorous. 7 W. R. 31.

S. 67. (Imprisonment when the offence is punishable with fine only.)

—the provisions of ss. 65 and 67 equally apply to punishments under the special laws like the Bombay Gambling Act. 91 I. C. 394; 27 Cr. L. J. 90; 1926 Sind 144.

—in summary trial imprisonment exceeding three months cannot be inflicted but as alternative punishment under this sec. It can be 6 A. 61.

—this section provides for maximum term of imprisonment awardable in default of payment of fine where fine is the only punishment. 22 M. 238, 10 W. R. 30.

S. 67. (Imprisonment when the offence is punishable with fine only)—contd.

—s. 33 Cr. P. C. does not authorise a Magistrate to pass a sentence in default of fine in excess of the term prescribed by sec. 65 I. P. C. 10 M. 165 F. B., 1 A. 461 F. B.

S. 68. (Imprisonment to terminate on payment of fine).

—the court which levies the fine must be the same as the court which imposed it. 9 W. R. 50 F. B.

S. 69. (Termination of imprisonment on payment of part of fine).

—Magistrate and sub-divisional officer should be very careful in all cases of payment of fine to at once communicate to the jailor. 5 M. H. C. R. Ap. 41.

—when fine is imposed in addition to transportation and the whole or part is paid the sentencing judge is to inform the authorities at Port Blair of this fact. 4 B. H. C. Cr. 37.

S. 70. (Fine when leviable).

—imprisonment in default of payment of fine does not discharge the accused from the liabilities of payment of fine. 23 All. 497, 3 W. R. 61.

—the bar of six years may save the property of the accused but not his personal arrest. Rat. Un. Cr. 207, 1884.

—immovable property cannot be proceeded against. 20 C 478, 5 B. H. C. Cr. 63.

—fine once written off as irrecoverable may be subsequently recovered when the accused acquires property. 26 A. W. N. 273, 3 A. L. J. 818.

S. 71. (Limit of punishment of offence made up of several offences).

—the rules for assessment of punishment are laid down in ss. 71 and 72 of the Penal Code and s. 35 of the Cr. P. C. 12 M. 36, 10 B. 493, 7 All. 29.

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—where the accused was found guilty of an offence under s. 147. I. P. C. and of an offence under s. 325 read with s. 149 I. P. C.

S. 71. (Limit of punishment of offences made up of several offences)—contd

—where the accused were convicted under s. 147 and ss. 352 and 149 I. P. C. and separate sentences were passed, sentence under s. 147 cannot be maintained because of the provision of this section. 31 C. W. N. 532 101 I. C. 660 : 28 Cr. L. J. 484, 51 C. 79 *fol.*

—separate sentences under s. 312 read with s. 149 are illegal, 1925 Cal 217 : 40 C. L. J. 306.

—theft of property belonging to two different persons at one time does not constitute two offences. 11 W. R. 39, 58 P. R. 1905, Cr. 33 of 1897, Rat. Un. Cr. 727. S. J. L. B. 168, 475, so also in case of dacoity. (1889) S. J. L. B. 444 and house-breaking to commit mischief and assault, 12 M. 36, 1 Bom. L. R. 142, 23 B. 706, F. B. rioting and being a member of an unlawful assembly, 1 W. R. 7, causing grievous hurt by dangerous robbery or dacoity with an attempt 1913, M. W. N. 544, rioting and with object being wrongful confinement. 8 C. W. N. 403, dishonestly receiving stolen property (s. 411) and assisting in concealment of stolen property (s. 414) 4 M. H. C. 13, kidnapping with intent secretly and wrongfully to confine a person (365) and for a reason to fear of death or grievous hurt in order to commit a

S. 71. (Limit of punishment of offence made up of several offences)—*contd.*

the purpose of prostitution under sec. 372, 7 W. R. 68, 3 W. R. 19, 7 W. R. 60, 9 W. R. 33, 16 W. R. 60, 20 W. R. 70, 4 M. H. O. Ap. 27 but wrongful confinement and assault were held not to be distinct offences 4 O. L. J. 90.

—If in rescuing cattle, force causing bodily pain is used, separate sentences for the offences of causing hurt and of rescuing I. C. 806; 1927 M. W. N. 850; 53

committing dacoity and being a person assembled for committing separate sentences can be legally 1925 Lah. 119.

but as a matter of practice a sentence of more than 3 months solitary confinement should not be passed on a person convicted at one trial for more than one offence. 68 I. C. 817; 23 O. L. J. 593.

—separate sentences under ss. 147 and 326 and 149 I. P. C. are illegal 1929 Pat. 263; 1929 Cr. O. 23; 10 Pat. L. T. 353; 8 Pat. 274.

—separate sentences under ss. 147 and 325 read with s. 149 I. P. C. are illegal. 35 O. W. N. 345.

—where the common object of the unlawful assembly was hurt and the accused were convicted and sentenced both under ss. 147 and 324 I. P. C. the only sentence that could be sustained was under s. 324 I. P. C. 1929 Pat. 206; 30 Cr. L. J. 634; 116 I. C. 523.

—there should not be separate sentences for offences under ss. 143, 149 and 341 I. P. C. 1930 Lah. 1044; 1930 Cr. O. 1220.

—separate sentences for rioting and hurt are legal when each person takes an individual part in the assault 41 O. L. J. 471; 1925 Cal. 1039; 89 I. C. 241; 26 Cr. L. J. 1927, 40 O. 511 *sol.* 1923 Cal. 408, *Dist.*

—separate sentences may be passed for rioting and causing grievous hurt with own hands, 17 B. 260 F. B. 12 O. 495, 16 O. 725, 19 O. 105, 7 All. 29, 414 F. B., 757 F. B. 1923 Cal. 403, but not when the grievous hurt is not caused individually, 16 O. 442 F. B., 16 All. 121, 24 M. L. T. 96, 1918 M. W. N. 526, 3 O. W. N. 761, 11 O. 349 *overruled*, 8 O. W. N. 519 *Dist.*, *see, also*, 4 O. W. N. 245, 3 P. L. J. 641, 17 B. 260 F. B. 8 P. R. 1895, 4 P. R. 1901, F. B. 31 P. R. 1916,

S. 71 (Limit of punishment of offence made up of several offences)—*contd*

260, but a contrary view is held in 7 All. 757 F. B., 9 All. 645, 10 All. 53 but see 14 A. L. J. R. 738.

—separate sentences under ss. 147 and under s. 304 and 149 are not legal. 35 C. W. N. 184

—when in the same Penal Statute there are two clauses applicable to the same act, the punishments are not to be regarded as cumulative unless expressly provided. 11 B. H. C. 13 (1890) Kat. Un Cr. 506

—house breaking by night and theft form a single and entire offence and cannot be punished separately. 2 W. R. 63, 5 W. R. 49, 6 W. R. 39, 49, 6 W. R. 92, 8 W. R. 31, D. L. R. sup. vol. 488 F. B. *Contra* (1864) W. R. (gasp no.) 31, (1886) S. J. L. D. 390.

—but it has been recently held that s. 71 not restricting the power of the court under s. 33 Cr. P. C., separate sentences to run one after the other, can be passed under s. 35 as amended, for an offence of housebreaking at night with intent to commit theft under s. 457 I. P. C. and of theft of ornaments under s. 380 I. P. C. 41 C. L. J. 563 : 1925 Cal 1015 : 88 I. C. 997 : 26 Cr. L. J. 1253.

—infliction of separate punishment is not a violation of law provided that the aggregate punishment awarded is not in excess of either of the offences. 4 C. L. J. 10 A. 58. 1 Bom. L. R. 142 : 23 16 of 1917, 9 B. H. C. 172 F. B.,

—separate punishments for attempt and abetment are illegal. 8 Bom. L. R. 835.

—a second class magistrate can pass under several sections an aggregate punishment for 9 months. 7 A. L. J. R. 910.

S. 72. (Punishment in case of doubtful offence.)

—"doubtful" refers to doubt not as to any fact but on a question of law. 1907 13 B. 1007 1905 7 W. W. P. 137.

—alternative, one of the punishments for murder, he is punishable under s. 302 as to admit in such a case of a less punishment than transportation for life being inflicted. 26 A. W. N. 93.

S. 73. (Solitary confinement)

—solitary confinement if inflicted for the whole term is illegal. 3 B. L. R. 49.

—order of solitary confinement as a part of the sentence in case tried summarily is legal. 6 All. 83.

S. 73. (Solitary confinement)—*contd.*

—when imprisonment is not the substantive sentence solitary imprisonment can be awarded. 36 All. 495, 26 P. R. 1873, 53 P. R. 1887, 20 P. R. 1896, 9 P. R. 1882.

—cumulative sentences of solitary confinement are contrary to the obvious intention of the section. 5 C. P. L. R. 23, 1 U. B. R. (1892—1896) 146.

—one month means thirty days. 7 P. R. 1878.

—in the case of simultaneous conviction, award of solitary confinement exceeding three months in the aggregate is legal. 11 P. R. 1877, 13 P. R. 1877, but such punishment should not be inflicted. 7 P. R. 1897, 37 P. R. 1905, (1897) P. J. L. B. 506, (1898) 1 U. B. R. 1897—1901) 247.

—exact period of solitary confinement should be clearly mentioned in the sentence, 33 P. R. 1869.

S. 74. (Limit of solitary confinement).

—solitary confinement cannot be inflicted for the whole term. 3 B. L. R. 49.

—out of the term of imprisonment for one year, it was held that solitary confinement for eighty-four days might be passed. 1 Weir 35, and sentence of one month was held to be legal where the accused was sentenced to four months' rigorous imprisonment and a fine of Rs. 25 or one month and a half's further rigorous imprisonment in default. 7 P. R. 1878.

—solitary confinement is imposed under s. 73 I. P. C. and under that sec. there is no authority for imposing a sentence of solitary confinement when a person is convicted under some other criminal Act. L. R. 5 A. 19 Cr.

—solitary confinement cannot be awarded when a person is convicted under a special or local law such as the Arms Act. 76 I. C. 184, 25 Cr. L. J. 120 : 1924 Lah. 667.

S. 75. (Enhanced punishment for certain offences after previous conviction).

—this section only enables a court to pass a sentence commensurate with the gravity of the offence. 1 P. L. T. 11.

—previous conviction can be looked into in awarding sentence also and not only in passing sentences more severe than those provided in the Penal Code. 56 M. L. J. 595 : 30 Cr. L. J. 471 : 52 M. 358 : 1929 Mad. 306 : 1929 M. W. N. 393 : 115 I. C. 483.

—recourse should not be had to it if the punishment provided for the offence is itself sufficient, 9 C. 877, nor is it to be employed to enhance enormously the heinousness of the petty offence. 1 C. L. R. 481, 12 C. W. N. 83 (note) 4 C. L. R. 1914, 3 P. W. R. 1914.

—the fact that a person has been convicted several times is no reason for inflicting a heavy sentence on him for a trivial offence. 1929 Lab. 787 : 1929 Cr. C. 419, 1929 Lah. 768 : 119 I. C. 429 : 30 Punj. L. R. 530 : 30 Cr. L. J. 1082.

—one found guilty of theft having one previous conviction of theft of old date is not habitual offender. (1834) S. J. L. B. 291.

S. 75. (Enhanced punishment for certain offences after previous conviction)—*contd*

—the previous offence must have been committed after the Penal Code came into operation. 4 B. H. C. 11, 3 W. R. 17, 4 W. R. 9, 5 W. R. 66

—the section is held not to apply to offences committed at one and the same time. 6 W. R. 60.

—the accused cannot be charged with a conviction for an offence committed subsequent to the date of the offence for which he is on trial. 1 Weir 39.

—when the prisoner's conviction has taken place a very short time before and where no imprisonment under it has yet been undergone and no time given for reformation, it would not be just to punish him as though he were an incorrigible offender whom no light punishment could wean from evil causes. 5 W. R. 66.

—but a subsequent offence shortly upon release from jail is a matter which entitles a Court to impose a severer sentence. 94 I. C. 365 : 1926 Lah. 336 : 27 Punj L. R. 267 : 27 Cr. L. J. 621.

—previous conviction which was held merely 12 years ago should not be taken into consideration for applying the provisions of this section. 96 I. C. 400 : 27 Cr. L. J. 944 : 1926 Lah. 617.

be punishable with
P. L. R. 1911, 36 P.

W. R. 1911.

—greatly enhanced sentence should not be inflicted for an offence trivial in nature merely for previous conviction. 31 Punj. L. R. 333 : 1930 Lah. 100 : 1930 Cr. C. 73.

—it is not necessary that the punishment awarded should have been for three years. 1 Weir 38.

—"subsequent offence" means offence committed subsequent to the previous conviction. 9 L. B. R. 77.

—this section does not apply where the offence for which the sentence is passed is committed after the date of the first offence but before conviction therefor. 95 I. C. 54 : 27 Cr. L. J. 726 : 1926 Bom 305 : 28 Bom. L. R. 484.

—conviction by a court in a Native State which is not acting under authority of the Local or Supreme Government cannot be taken into account under this section.

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Weir 40, 2 P. R. 1884.
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S. 75. (Enhanced punishment for certain offences after previous conviction)—*contd.*

—the value of the property stolen is a mere accident, and the important question is the intention of the man and his character and attitude towards society. 28 P. R. 1903.

—an accused convicted for an attempt to commit an offence
shment. 88 I. C. 724 : 1926 All. 44 :

attempts punishable under s. 511
C. 340 : 29 Cr. L. J. 4.
in a conviction under s. 511 I. P. C.

made c
5 B. 14
1907, 1
123, 1

not specially
s. 35.
P. R.
120,

—the evidence of previous conviction must be clear and precise
14 W. R. 7.

—the previous conviction should be clearly and legally proved either by an extract certified by the officer in whose custody the records are or by a certificate of the Officer in charge of the jail or by the production of the actual warrant of commitment. There must also be evidence of identity. 26 Punj. L. R. 843.

—there must be some proof or admission by the offender that he is the person who committed the previous offence. 53 M. 795 : 1929 Mad. 744 : 1929 Cr. C. 337-57 M. L. J. 470 : 31 Cr. L. J. 329 : 121 I. C. 762.

—when previous conviction is relied upon for the purpose of applying s. 75 it should be proved by one of the modes laid down in s. 511 Cr. P. C. and the dates and particulars thereof should be set out in the judgment with precision. The Court should not rely on the admission of the accused. 1929 Cal. 763 : 1929 Cr. C. 465 : 119 I. C. 429 : 30 Punj. L. R. 530 : 30 Cr. L. J. 1082.

—where the fact that the accused has been called upon to give security for good behaviour on no less than three occasions was taken into consideration from the police papers in awarding heavy sentence but the accused was not asked anything. It was illegal. 1930 Cr. C. 122 : 1930 Sind 58.

—the provisions of this section are confined to offences punishable under this Code only. 10 C. L. R. 392, 1 Weir 39, 17 P. R. 1904, 3 W. R. 17, 4 W. R. 9, 7 C. P. L. R. 24.

punishment for previ-
L. R. 548, 31 P. R.
f. H. C. Ap. 2 (1871).

necessarily mean that
C. 365 : 27 Cr. L. J.

S. 75. (Enhanced punishment for certain offences after previous conviction)—*contd.*

—courts should exercise discretion in making the penalty fit the crime. The practice of committing petty offenders to the Sessions Court after three or four convictions should cease. Even if such offenders are committed there is no necessity for the Sessions Judge to inflict a vindictive sentence. 26 Bom. L. R. 431: 1924 Bom. 453.

—the previous conviction of an accused for an offence which is not punishable under Ch. XII or Ch. XVII cannot be taken into consideration for the purpose of awarding enhanced punishment at a subsequent conviction for an offence under s. 411 I. P. C., 6 L. L. J. 110.

—a previous security under s. 110 Cr. P. C. is not relevant for the purpose of sec. 75 I. P. C., 29 Cr. L. J. 772: 110 I. C. 804.

—previous conviction for theft and burglary should not be considered in increasing the sentence for an offence under s. 419, I. P. C. (cheating by personation). 100 I. C. 535: 1927 Lah. 220: 23 Cr. L. J. 312.

—s. 75 I. P. C. is not applicable where the subsequent conviction is one under s. 443, the offence under that sec. being punishable with

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—a sentence should not be heavier than is necessary to deter the criminal from committing the offence again; this sec. and s. 221 Cr. P. C. are not intended for the purpose of automatically enhancing by a kind of Geometrical progression the sentence to be passed after the previous conviction. 9 L. B. R. 167.

—where previous conviction is proved the prisoners cannot be dealt with under sec. 35 Cr. P. C. as if he had been convicted of two offences. 11 All. 393.

—under this sec. no sentence of whipping can be passed in addition to any other punishment. 18 (1894), P. J. L. B. 78.

—a Sessions Judge cannot enhance the punishment of a prisoner already undergoing imprisonment by amalgamating the two sentences and converting the sentences of imprisonment to transportation. 5 B. H. C. Cr. 36.

—records of previous conviction should not be put in until the close of the trial as they can only be used for determining the

be stated
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19 W. R.

General exceptions.

—burden of proving the existence of circumstances bringing the case within any of the general exception is upon the accused. 19 C. W. N. 1043, 4 C. 124.

S. 76. (Act done by a person bound by law to do).

—nothing but fear of instant death is defence for a Policeman who tortures any one by order of a superior. 20 B. 394.

—there being no room for a mistake of death a Naisk and three *Sepoys* under him who acted under his order were found to be guilty of culpable homicide. 16 P. R. 1883.

—a Police officer who commits a wrongful act under the order of his superior officer is liable to punishment as his mistake of law in supposing himself authorised cannot be accepted as a good defence though it may be a ground for mitigation of punishment (1882) S. J. L. B. 164, 5 Cr. Rep. 34.

—police officer arresting a wrong person under a warrant is not guilty of wrongful confinement but can invoke the protection of this sec. 26 Bom. L. R. 138; 81 I. C. 317; 25 Cr. L. J. 797; 1924 Bom. 333.

—defamatory statement made by a witness not bound by law to depose cannot be protected by the section. 18 A. L. J. R. 846.

S. 77. (Act of Judge acting judicially).

—it is not in respect of act in court, act *sedente curia*, that a Judge has an immunity, but in respect of all acts of a Judicial nature. 2 M. I. A. 293, 308 P. C.

—if a party *bona fide* and not absurdly, believes that he is acting in pursuance of a Statute, he is entitled to the special protection. 4 M. I. A. 353, P. C.

S. 78. (Act done pursuant to the judgment or order of court).

—if the form of the "order" is not in accordance with law a person executing such order will not be protected by this section. 4 L. B. R. 253

—"Jurisdiction" means authority or power to act in a matter and not in a particular manner or form. 12 All. 115, 2 M. I. A. 293, P. C.

—the arrest of Judgment-debtor under civil process while going to court in obedience to summons to give evidence was held to be illegal. 3 W. R. 5.

S. 79. (Act done by person justified or by mistake of fact believing himself justified by law.)

—this section does not protect from an offence punishable by any Special or Local law. 38 M. 773 *contra*. 14 Bom. L. R. 363.

—the action of a constable in arresting the complainant on *bona fide* suspicion of theft was held to be protected under this section. 12 B. 377.

General exceptions.

—burden of proving the existence of circumstances bringing the case within any of the general exception is upon the accused. 19 C. W. N. 1043, 4 C. 124.

S. 76. (Act done by a person bound by law to do).

—nothing but fear of instant death is defence for a Policeman who tortures any one by order of a superior. 20 B. 394.

—there being no room for a mistake of death a Naik and three Sepoys under him who acted under his order were found to be guilty of culpable homicide. 16 P. R. 1883.

—a Police officer who commits a wrongful act under the order of his superior officer is liable to punishment as his mistake of law in supposing himself authorised cannot be accepted as a good defence though it may be a ground for mitigation of punishment (1882) S. J. L. B. 164, 5 Cr. Rep. 34.

—police officer arresting a wrong person under a warrant is not guilty of wrongful confinement but can invoke the protection of this sec. 26 Bom. L. R. 138; 81 I. C. 317; 25 Cr. L. J. 797; 1924 Bom. 333.

—defamatory statement made by a witness not bound by law to depose cannot be protected by the section. 18 A. L. J. R. 846.

S. 77. (Act of Judge acting judicially).

—it is not in respect of act in court, act *sedente curia*, that a Judge has an immunity, but in respect of all acts of a Judicial nature. 2 M. I. A. 293, 308 P. C.

—if a party *bona fide* and not absurdly, believes that he is acting in pursuance of a Statute, he is entitled to the special protection. 4 M. I. A. 353, P. C.

S. 78. (Act done pursuant to the judgment or order of court).

—if the form of the "order" is not in accordance with law a person executing such order will not be protected by this section. 4 L. B. R. 253

—"Jurisdiction" means authority or power to act in a matter and not in a particular manner or form. 12 All. 115, 2 M. I. A. 293, P. C.

—the arrest of Judgment-debtor under civil process while going to court in obedience to summons to give evidence was held to be illegal. 3 W. R. 5.

S. 79. (Act done by person justified or by mistake of fact believing himself justified by law.)

—this section does not protect from an offence punishable by any Special or Local law. 38 M. 773 *contra*. 14 Bom. L. R. 365.

—the action of a constable in arresting the complainant on *bona fide* suspicion of theft was held to be protected under this section. 12 B. 377.

S. 79. (Act done by person justified or by mistake of fact believing himself justified by law;—cond.).

—a chaukidar taking the complainant for thief in good faith and capturing him was protected under this sec. and sec. 76. 2 W. R. 9.

—there is no right of private defence against the arrest affected by a police when he acts under colour of his office, even though such arrest was not justified by law. 29 Cr. L. J. 69: 106 I. C. 581.

—persons who went to execute a warrant of arrest against J. Dr. and stopped and examined a close palanquin of a *Pardanashin* lady of rank on suspicion of the Jt. Dr. escaping by it, were protected by this section. 24 C. 885.

—ignorance of criminal law of this country is no defence, 14 M. 312, 354, but it is evidence of mental condition when the knowledge of the accused is necessary to constitute the offence. 1 Weir 74.

—an act of State in respect of which the jurisdiction of the court is barred must be an act which does not profess to be done under colour of law, and which does not profess to violate any jurisdiction or duties and rights.

—a seizure of territory by the British Government as a Sovereign power, 7 M. I. A. 478 P. C., an act done by an agent of Government in his political capacity 7 B. L. R. 452, and an order of the Governor General in Council deposing the ruler of a native State 32 C. 1: 6 Bom. L. R. 763, P. C., are acts of State.

—the acts of State of which Municipal Courts in India are debarred from taking cognizance are acts done in the exercise of Sovereign Powers which do not profess to be justified by Municipal Law. 5 M. 273.

—the legal position of the Government in India is such that it came to conduct a search were armed robbers and seized them and kept them in confinement with a view to making them over to the custody of the authorities they were not guilty of any offence. 72 A. L. J. 501: 1924 All. 645.

—where the accused assaulted a man taking him to be a ghost i.e., under a mistake of fact and the assault proved fatal he was not guilty either under s. 302 or s. 304-A. 99 I. C. 71: 28 Cr. L. J. 39: 1926 Lah. 54, 11 P. R. 1588 Cr. Expl.

—where a person is not guilty of an offence when he is not guilty.

—where a person is not guilty of an offence when he is not guilty.

S. 80. (Accident in doing a lawful act).

—shooting accident is protected by this section. 3 Bom. L. R. 678.

S. 81. (Harmful act done to protect other harm).

—none can be tried for any delusion or misconception of mind however culpable and criminal such delusion or misconception may appear to be. 3 All. 279.

—kick was held to be justified under this section as given in good faith for the purpose of preventing greater harm. 11 Bom. 678.

S. 82. (Act of child under 7).

—the proof of the fact of the accused being under seven years of age is *ipso facto* an answer to the prosecution. 22 W. R. 27.

—receiving stolen property from a child under seven years of age amounts to criminal misappropriation at least. 1 Weir 470.

S. 83 (Act of a child above 7 and under 12).

—in construing the section the capacity of doing that which is wrong is so much to be measured by years as by the strength of the offender's understanding and judgment. 1 W. R. 43.

—a person who is not under 12 years of age cannot plead the benefit of s. 83 even if it is proved that he was not of sufficiently mature mind. 1929 Lah. 64: 113 I. C. 17: 30 Cr. L. J. 65: 10 Lab. L. J. 463.

—the Legislature is manifestly referring in this section to an exceptional immaturity of intellect. 22 W. R. 27.

—"consequence" of his conduct does not refer to the penal consequence of the offender but the natural consequences which flow from a voluntary act. 22 W. R. 27.

—where a child under 12 committing theft is discharged under this section the person who purchased the stolen property is liable to be convicted for receiving stolen property. 6 M. 373.

—a child of ten years was discharged under this section from bigamy. Cr. Rul. 55, 1896, Rat. Un. Cr. R. 876.

—the circumstances of a case may disclose such a degree of malice as to justify the maxim *malitia supplet aetatem*. 1 W. R. 43.

—the presumption of English law with respect to the offence of rape committed by a child has no application to India. 37 All. 157.

—a boy of twelve can be convicted of attempt to commit rape. 11 B. L. T. 135.

—it is a matter of defence, 22 W. R. 27, and the Magistrate should consider the meaning of this section and that he has to be of the nature

debarred from the defence under s. 83 I. P. C. merely because of his ignorance of the court's procedure. The jury is to decide whether at the time of the offence the prisoner had guilty knowledge that he was doing wrong. 10 O. & A. L. R. 789.

S. 84. (Act of a person of unsound mind).

—it is by the test stated in the section as distinguished from the medical test that the criminality of an act is to be determined. 10 B. 512, 2 U. B. R. 28.

—one who by reason of mental disease is prevented from controlling his own conduct, and a man who is deprived by disease affecting the mind of the power of passing a rational judgment on the moral character of the act he meant to do, is entitled to the benefit of the section. 42 P. R. 1887.

—where the accused had been suffering from a type of insanity known as *folie circulaire*, a type of insanity which commences in abnormality of conduct on the part of the sufferer, and was of unsound mind at the time when he committed the murder but knew perfectly well that he was doing wrong thing, he cannot get the benefit of this sec. 46 A. 243, 22 A. L. J. 116; 25 Cr. L. J. 683; 81 I. C. 171

—though the accused person was at the time when he committed the act in a highly excited and unbalanced condition yet he was conscious that what he was doing was wrong and a crime, he must be held guilty. 77 I. C. 443; 25 Cr. L. J. 395.

—it must clearly be proved that at the time of committing the act, the accused was labouring under such a defect of reason, from disease of mind as not to know the nature and quality of the act. 7 W. R. 42, 24 W. R. 5, 81 I. C. 64; 25 Cr. L. J. 576. If he knew it, he was responsible. If a person is of unsound mind, he is to be judged by the ordinary rules in regard to insanity, no matter whether the insanity arose from disease of the brain or from persistent indulgence in intoxicating drugs or liquor. 26 A. W. N. 193.

—a plea of insanity at the time of trial will not avail the accused. 56 P. R. 1866.

—It is only "unsoundness of mind" which naturally impairs the cogn. tion. 23

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was doing was either wrong or contrary to law. 1928 Lah. 796; 106 I. C. 796; 29 Cr. L. J. 304; 9 Lah. 371.

—where the evidence merely shows that the accused was in a bewildered state of mind a day or two before the date of occurrence the accused cannot be held to be of unsound mind, 1928 Pat. 363; 29 Cr. L. J. 393; 108 I. C. 424.

—mere eccentricity or singularity of manner is not sufficient to establish a defence on the ground of insanity. If there be premeditation the plea of insanity is at once negatived. To establish the plea of insanity it must be clearly proved that at the time of committing the act the accused was under such a defect that he did not know the nature of his act, and

S. 84. (Act of a person of unsound mind)—contd.

quence. 33 C. W. N. 136: 48 O. L. J. 307: 115 I. C. 561: 30 Cr. L. J. 494: 1929 Cal. 1, 1928 Lab. 796: 29 Cr. L. J. 204: 106 I. C. 795.

—in the absence of other evidence mere want of motive for the crime is not sufficient to base an inference of unsoundness of mind for the purposes of defence under s. 84, but want of notice is a circumstance which may be taken into consideration together with other material to enable a court to decide the state of mind of the accused at the time of committing the offence. 1928 Lab. 796: 29 Cr. L. J. 204: 9 Lab. 371: 106 I. C. 795.

—where no motive for the murder of the deceased is proved and the accused may be said to have shown some signs that he suffers from a certain hallucination but there is no evidence as to when the accused committed the murder whether he was incapable of knowing the nature of his act he cannot be said to be suffering from unsoundness of mind within s. 84 I. P. C., 30 Cr. L. J. 1034: 119 I. C. 270.

—partial delusion, or the mere existence of mental disease does not exempt a person from criminal responsibility though mental weakness caused by disease is an extenuating circumstance affecting the sentence. Rat. Un Cr. 229, (1893) P. L. J. B. 249.

—the fact that the accused was not insane at the time of the trial is of no importance for the purpose of deciding whether at the time the crimes were committed the accused was insane or not. 49 M. L. J. 598: 1925 M. W. N. 649: 1925 Mad. 1239: 23 L. W. 530: 91 I. C. 78, 27 Cr. L. J. 46.

—the fact that there was no sane motive at all for the crime is one of the *indicia* of the act being done by some kind of insane impulse, *above case*.

—the onus of proving the defence afforded by s. 84 clearly rests on the accused. 55 M. L. J. 228: 29 Cr. L. J. 63: 106 I. C. 559: 1928 Mad. 196, 1928 Lab. 796: 106 I. C. 796: 29 Cr. L. J. 204: 9 Lab. 371, 33 C. W. N. 136: 48 C. L. J. 307.

—the law presumes every person to be sane and even if a lunatic has lucid intervals, the offence to have been committed at such interval, unless contrary is proved. 21 A. W. N. 132: 20 W. R. 70: 13 B. L. R. Ap. 20, Rat. Un. 172 (1881).

—the burden of proving the defence under this section rests on the accused. 25 A. W. N. 2, 17 O. P. R. 113 Cr. Rul. 64 of 1895. But the burden is shifted by proving mental derangement a year previous to the act being committed, combined with peculiar circumstances. 2 W. R. 33.

of mental derangement, legal insanity, since it is destroyed by it.

—the evidence must prove an aberration of reason preventing the moral sense, 13 B. L. R. Ap. 20.

—even if it be proved that the murderer was concealed, odd and irascible (irritable) he will not be exempted from criminal

S. 84. (Act of a person of unsound mind)—contd.

liability as it cannot be said that he was incapable of knowing that murder was wrong. 103 I. C. 59: 1927 Lah. 567: 28 Cr. L. J. 635.

—the mere facts that the physical and mental ailments from which the accused suffered had rendered his intellect weak and had affected his emotion and will, do not prove that his cognitive faculties had been impaired to a degree as described in the last part of the section. 102 I. C. 774: 1927 Lah. 674: 28 Cr. L. J. 598.

—the accused may be suffering from some sort of insanity in the sense in which words would be used by an alienist but still he may not be suffering from unsoundness of mind as defined by this sec. The law does not recognise anything but incapacity to realise the nature of the act and presumes that where a man's mind or his faculties of ratiocination are sufficiently clear to apprehend what he is doing he must always be presumed to intend the consequences of his action. 99 I. C. 325: 1927 Lah. 52: 28 Cr. L. J. 120 27 Punj L. R. 813

—a man may be suffering from some form of insanity in the sense in which the words could be used by an alienist but may not be suffering from unsoundness of mind as defined in this sec. 30 Cr. L. J. 1024: 119 I. C. 270.

—if he labours under a partial delusion only and is not in other respects insane he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists, were real. 28 C. 613.

—the circumstances of an act being apparently motiveless is not a ground from which the existence of an irresistible influence can be inferred. Motives exist unknown and innumerable which prompt the act. 40 P. R. 1905.

—homicidal maniacs have no motive to perpetrate the crime. (1912) M. W. N. 825.

—if voluntary drunkenness has caused even a temporary disease producing such incapacity as is mentioned in this sec. then the act will be excused. 29 C. 493.

—the term unsoundness of mind cannot be construed so widely as to cover the loss of self-control following a hostile blow on the head. 7 L. B. R. 13.

—when the unsoundness of mind is not such as would make the accused incapable of knowing the nature of the act, he cannot be exempted. 22 C. 817, 25 M. L. T. 361, 3 W. R. 9, (1919) M. W. N. 796

—homicide by person suffering from fever when annoyed

... 21 H. 512.
... homicidal mania will not
... It was held that
... a diseased state of mind as to make him incapable of knowing the
nature of his act, this section does not apply in his favour. 14 E.

S. 88. (Act done by consent for benefit)—contd.

any offence 28 A. W. N. 91; 5 A. L. J. Cr. 155 but where deceased did not know the risk he was running in consenting to the operation, the accused was held punishable. 14 C. 566, 5 W. R. 7.

S. 90. (Consent known to be given under fear or misconception)

the consent must be free it is not valid if obtained by mis-
not only a knowledge
a deliberate free act of

himself to emasculation.
in the least dangerous
way, and died from the injury the accused was guilty of culpable homicide and not murder. 5 W. R. 7.

—consent given under misconception of fact or on a misrepresentation of fact is no consent. 12 W. R. 7, 36 M. 453, 17 P. R. 1916, (Contrn) (1915) 8 L. B. R. 166.

—the onus of proving consent is on the accused. 6 W. R. 57.

S. 92. (Act done in good faith for benefit without consent.)

—the explanation to this section does not justify the performance of a dangerous operation by an unskilled person. 5 W. R. 7.

S. 94. (Act to which a person is compelled by threat.)

—by this section the accused is excused from consequences of any act except murder and offences against the state punishable with death. 1912 M. W. N. 1108.

—nothing but fear of instant death is a defence under this section. 20 B. 394, 10 W. R. 48, 14 B. 115, 131, 20 B. 215.

where the accused or illiterate man was compelled by his
assist in the removal of the
47 A. 306; 85 I. C. 52; 1925

—under this sec. a plea of compulsion by threats which
instant death is a good defence
except murder and offences
28 C. W. N. 1046; 40 C.
Cal. 1031.

does not include abetment
28 C. W. N. 1046; 40 C.
Cal. 1031.

S. 95. (Act causing slight harm.)

—where the accused instead of bringing certain bags of papers
took them to a place
of trust and the section
not an offence under the

S. 95. (Act causing slight harm)—*confd.*

—this section has no application to an act which is an offence independently of this Code. 1 N. L. R. 391.

—catching hold of the hand of a woman of questionable character while going through a public thoroughfare to fetch water 7 A. W. N. 73, taking pods almost valueless, from a tree standing on Government wasteland (1868) 5 B. H. C. Cr. 35, 8 C. P. L. R. 15, taking some earth of hardly any appreciable value from an open piece of ground, 2 A. W. N. 229, causing harm on the reputation of the complainant by the imputation that he was travelling with a wrong ticket, 13 M. 34, removing a semi-decayed branch of a tamarind tree not belonging to him but overhanging the roof of his house 8 A. W. N. 100 (1894) C. P. L. R. 15, a barrister calling a pleader liar as a retort 3 A. W. N. 46, a pleader calling a person *halkub banchood* who insisted on sitting in the pleader's room after being ejected out of it 18 Bom. L. R. 1079, a villager saying to "to the place of a well quickly" 21 O. W. N. 11, acting under the provision

—taking of a respectable person by the ear, 1 O. W. N. 13, handing an umbrella to a District Superintendent 2 W. R. 67, and mangoes; 61 Cr. Rul. 10, possession of an unstamped paper, accused 12 M. 148, 27 All. 28, 28 Cr. R. 35, dubbing by the accused 2 M. W. N. 8, are acts causing serious harm and are not exempted by this section from punishment.

—the charge of obstructing the peons of a municipality is very trivial one. 1929 All. 940; 1929 Cr. C. 668; 120 I. C. 121; 1930 A. L. J. 218.

—the harm caused by the imputation that the proprietor of a newspaper is in debt is slight and is not actionable under this sec. 99 I. C. 347, 1927 Rang. 43; 28 Cr. L. J. 139.

S. 96. (Things done in private defence)

—every citizen has the right of private defence provided the injury which he inflicts in self-defence is not out of proportion to the injury with which he is threatened. 1930 Lab. 93; 1930 Cr. C. 109.

—there is no right of private defence against any act which is not in itself an offence under the Code. 16 O. 206, 218.

—the right of an accused person to defend himself can only be limited by the provision of the Statute law. An accused can set up an alternative inconsistent defence. 40 All. 284, 1 P. L. T. 79.

—the right is subject in all cases to the restriction contained in Cls. 3 and 4 of sec. 99, 36 P. R. 1879.

S. 96. (Things done in private defence)—*contd.*

—this right of private defence cannot be pleaded by persons who court the attack (1864) W. R. (Gap. no) 11, or when both parties are determined to fight. 1925 Oudh 438: 29 O. C.-92: 89 I. C. 158.

—where the accused had picked the quarrel but ran away at a distance when finding that he could not very well make his escape from the attack with *lathis* turned round and hit a blow he hit in self-defence. 85 I. C. 382: 1925 All. 313: 26 Cr. L. J. 542: 23 A. L. J. 131.

—this plea cannot be taken in appeal for the first time where inconsistent plea have been taken in lower courts. 21 All. 121.

—the accused must plead the right of private defence and must prove it. 1 C. L. R. 62, 11 C. L. R. 232.

—a court cannot set up such plea when the accused himself has not done it. 24 A. W. N. 113, 15 A. L. J. 565. *Contra.* A court

of private
I. C. 149:
evidence
18.

—an appellate court should examine a plea of self-defence even if it was not adverted to in the trial court. L. R. 6 All. 81 Cr.: 87 I. C. 597: 26 Cr. L. J. 997: 1925 All. 664, 90 I. C. 400: 26 Cr. L. J. 1552.

—It is a matter which is to be decided on the facts before the court in each instance. 6 L. L. J. 625.

—when the accused pleads the right of a private defence he must prove it. 31 C. W. N. 314: 45 O. L. J. 131: 1927 Cal. 314: 28 Cr. L. J. 334: 100 I. C. 718, 1926 Pat. 433: 5 Pat. 520: 8 Pat. L. T. 319.

—to prove that the injury was done in defence it should be shown that the accused did all he could to avoid it. 1926 Pat. 433: 5 Pat. 520: 8 Pat. L. T. 319.

—where neither side has peaceful possession of the property it cannot be said that the property belongs to the accused so as to invoke the right of private defence. 1926 Pat. 433: 5 Pat. 520: 8 Pat. L. T. 319.

—where the parties challenged each other to come out and fight and there was an encounter outside the parties' houses but the accused ran into his own house being followed by the deceased on whom a fatal spear wound was inflicted, held that though the right of private defence could not properly be pleaded yet the act of the accused warranted the alteration of the conviction of accused from under s. 303 to under s. 304 Cr. P. C. 89 I. C. 264: 26 Cr. L. J. 1320: L. R. 6 A. 113 Cr.: 1925 All. 753.

—where the accused being attacked by the deceased killed him on the head rather harder than perhaps he intended to have done and this killed him he cannot be said to have exceeded the right of private defence. 1929 All. 897: 1929 Cr. C. 489.

S. 96. (Things done in private defence)—contd.

—where both parties come to a fight armed with a full determination to settle their dispute by force there cannot exist any right of private defence 89 I. C. 155; 1925 Oudh. 438; 26 Cr. Cr. L. J. 1294 12 O. L. J. 337, 1926 Pat. 433. 5 Pat. 520.

—in every case whether a person accused of an offence has or has not justified the commission of that offence by proving that it was committed in the course of his defending himself is a matter which has to be decided on the facts before the court in each instance 6 Lah. L. J. 625. 86 I. C. 465; 1925 Lah. 276; 26 Cr. L. J. 817.

—ss. 96 and 97, ss. 102 and 105 define the limits within which a private citizen can place restraint on another citizen. 46 M. 605; 73 I. C. 343 24 Cr. L. J. 599

S. 97. (Right of private defence of the body and of property).

—when a person assisted by a friend retaliated severely on a trespasser into his house with the object of having intercourse with his wife they committed no offence. 20 W. R. 36. So also where the accused stabbed the deceased who was using daku on another to take his life, he exercised the right of private defence under this section. 10 Bur. L. R. 99, 4 B. L. T. 268.

—a man upon whom lathi blows are showered is justified in striking the opponent with spear and does not exceed the right of private defence. 1928 Lah. 900; 110 I. C. 787; 29 Cr. L. J. 755.

—but when the accused exceeds such right by beating the wounded man after he had fallen, he is guilty. 39 C. 896.

—in an excited and confused moment it cannot be expected of a man to weigh the means that he intends to adopt at the spur of the moment for self-defence is a golden scale, though the counter-attack should not be out of all proportion to the force employed in the original attack. 100 I. C. 124; 1927 Lah. 194; 28 Cr. L. J. 252.

—firing gun and causing death is justified in case of imminent danger to life owing to party faction and attack by the opposite party. But facts unknown to the accused at the time of occurrence and proved before the court at the trial should not be taken into account and made the basis for finding against the plea of self defence 1929 Mad. 748; 1929 M. W. N. 511; 1929 Cr. C. 330; 122 I. C. 651; 31 Cr. L. J. 452

—the plea of private defence requires to detail the exact circumstances which led the accused to strike the blow in question; Obviously such a defence can seldom be successfully made out when the accused's case is that they did not strike the blow at all. If there is any evidence of private defence then the Judge must put the case of private defence to the jury but if there is no such evidence it is not the duty of the Judge to put to the jury hypothetical cases unsupported by any evidence. 32 O. W. N. 839; 48 C. L. J. 138; 1928 Cal. 700; 117 I. C. 596; 39 Cr. L. J. 799.

S. 97. (Right of private defence of the body and of property)
—*contd.*

—but it has been held that to establish the right of private defence the accused is not bound to prove affirmatively his own possession, he can rely on the presumption of continuance of possession. 100 I. C. 383 : 1927 Pat. 181 : 28 Cr. L. J. 303.

—if a person kills a wild animal or wild bird on the property of another person the dead creature belongs to the latter who or whose agent has the right to seize the dead creature from the possession of the killer but the killer has a right to retain possession of the dead creature against any body else. 3 Pat. 549 : 81 I. C. 82 : 25 Cr. L. J. 94.

—where a Police Inspector in making a search in a theft case laid hands on a woman without any lawful excuse and her brother-in-law came to her assistance when there was a quarrel and the brother-in-law being struck with a stick took it from the Police Inspector and gave two blows on him as a result of which he died, of private defence,
J. 1037 : L. R. 6 A.

—under s. 97 every person has a right to defend the property whether movable or immovable of himself or any other person against any act which is an offence falling under the definition of theft, robbery or criminal trespass or which is an attempt to commit theft, robbery or criminal trespass. 22 A. L. J. 81 : 77 I. C. 881 : 25 Cr. L. J. 481.

—the right of private defence cannot be availed of when there was sufficient time to have recourse to the public authorities. 88 I. C. 13 : 26 Cr. L. J. 1069 : 1925 Nag. 372, 102 I. C. 769 : 28 Cr. L. J. 593, 104 I. C. 461 : 1927 Lab. 705 : 28 Cr. L. J. 848.

—where right of private defence is set up the essence of the case should be to ascertain who was the aggressor and whether the accused party used more violence than was necessary. It is only against a danger present and imminent that the right of private defence avails. 85 I. C. 731 : 26 Cr. L. J. 587 : 1925 Nag. 260.

—where cattle were staying into the lands of the accused they were being taken to the pound when the complainants tried to rescue them by force. The accused in trying to prevent the rescue caused grievous hurt to the complainants, held they only exercised the right of private defence and were not guilty. 86 I. C. 988 : 26 Cr. L. J. 924 : 6 Pat. L. T. 838 : 1925 Pat. 762.

M. W. N. 302.

—men who have reason to fear that a man is going to attack them with a loaded weapon, are entitled to attack him first and to use force in order to destroy his power of attack or take the from him. 86 I. C. 45 : 26 Cr. L. J. 669 : 23 A. L. J. 68 : 1925

S. 97. (Right of private defence of the body and of property)
—*contd.*

—where three or four men being armed with lathis etc. to commit dacoity, at them and one of t of private defence. Cr. L. J. 504.

—a person in possession has the right to defend it against another ejecting him, 7 W. R. 76, 14 W. R. 69, 16 W. R. 64, and to take the crops he has grown, 17 C. L. J. 394 and to protect it from injury, 19 W. R. 66, 23 W. R. 25, 16 C. 206, and from being stolen, 12 W. R. 15; it is immaterial whether the person in possession had the right to possess, 23 W. R. 40 but a persistent demand of rent does not justify assault on the person making the demand. 19 W. R. 75.

—when in execution of a decree possession was given to the decree-holder but the Jt. Dr. was allowed to reap the crops on the land and after the reaping thereof the accused offered resistance by using force to the decree-holder entering upon the land, the accused had no right of private defence. 100 I. C. 232; 1927 Lah. 193; 28 Punj. L. R. 273; 28 Cr. L. J. 264.

—a person in possession of lands is not justified in confining persons who commit trespass. 13 W. R. 64.

—tenants in possession who are not parties to the civil suit against their land-lords are justified in claiming the crops grown by them and resisting the D. Hr. in taking delivery of possession. 15 C. L. J. 80.

—members of religious procession are justified in the exercise of private defence against the obstructors thereof. 26 M. 249.

—threatening attitude against Police-officer making unlawful search is justified under this section. 15 C. W. N. 1078.

—where the accused was only to stand back and was safe, his act of firing the gun was not a legal exercise of the right of private defence 13 P. R. 1868, 12 P. R. 1872.

—where the party sowing the crop seeing the other party cutting the crop took counsel together and then proceeded to attack the latter and caused grievous hurt, it was held that they could not take the plea of private defence. 24 All. 143, 298, *Contra*. 24 C. 686, 25 M. 624, 14 Bom. 411.

—temporary occupation of land by force does not give a party the right of private defence against the actual occupant. 35 C. 103.

—if the owners of a tree while in possession are attacked by a party armed with dongs they have the right of private defence. 102 I. C. 769; 28 Cr. L. J. 593, 1923 Lah. 194

—the person setting up the right of private defence of property must show that the property was his property of which he was in actual possession. The mere right to have possession restored to by Civil Court does not justify an individual in taking the law into his own hands. 98 I. C. 467; 1927 Sind 92; 27 Cr. L. J. 1347.

S. 97. (Right of private defence of the body and of property)
—contd.

—but it has been held that to establish the right of private defence the accused is not bound to prove affirmatively his own possession, he can rely on the presumption of continuance of possession. 100 I. C. 383 : 1927 Pat. 181 : 28 Cr. L. J. 303.

—if a person kills a wild animal or wild bird on the property of another person the dead creature belongs to the latter who or whose agent has the right to seize the dead creature from the possession of the killer but the killer has a right to retain possession of the dead creature against any body else. 3 Pat. 549 : 81 I. C. 82 : 25 Cr. L. J. 94.

—where a Police Inspector in making a search in a theft case laid hands on a woman without any lawful excuse and her brother-in-law came to her assistance when there was a quarrel and the brother-in-law being struck with a stick took it from the Police Inspector and gave two blows on him as a result of which he died, held that the accused did not exceed the right of private defence, death being not caused voluntarily. 23 A. L. J. 1037 : L. R. 6 A. 173 Cr. 91 I. C. 43 : 27 Cr. L. J. 11 : 1926 All. 147.

—under s. 97 every person has a right to defend the property whether movable or immovable of himself or any other person against any act which is an offence falling under the definition of theft, robbery or criminal trespass or which is an attempt to commit theft, robbery or criminal trespass. 22 A. L. J. 81 : 77 I. C. 881 : 25 Cr. L. J. 481.

—the right of private defence cannot be availed of when there was sufficient time to have recourse to the public authorities. 88 I. C. 13 : 26 Cr. L. J. 1069 : 1925 Nag. 372, 102 I. C. 769 : 28 Cr. L. J. 593, 104 I. C. 461 : 1927 Lah. 705 : 28 Cr. L. J. 848.

—where right of private defence is set up the essence of the case should be to ascertain who was the aggressor and whether the accused party used more violence than was necessary. It is only against a danger present and imminent that the right of private defence avails. 85 I. C. 731 : 26 Cr. L. J. 587 : 1925 Nag. 260.

—where cattle were straying into the lands of the accused they were being taken to the pound when the complainants tried to rescue them by force. The accused in trying to prevent the rescue caused grievous hurt to the complainants, held they only exercised the right of private defence and were not guilty. 86 I. C. 988 : 26 Cr. L. J. 924 : 6 Pat. L. T. 838 : 1925 Pat. 762.

—to determine whether the accused had the right of private defence it is not the triviality of the injuries inflicted on him that has to be considered but the question is whether the accused had any reasonable apprehension of grievous hurt or death to himself. 1930 M. W. N. 502.

—men who have reason to fear that a man is going to attack them with a loaded weapon, are entitled to attack him first and to use force in order to destroy his power of attack or take the weapon from him. 86 I. C. 45 : 26 Cr. L. J. 669 : 23 A. L. J. 68 : 1925 All.

S. 97. (Right of private defence of the body and of property)
—*confd.*

—there can be no right of private defence where both parties, in a riot, are aware that a fight is likely to happen and expecting to be attacked; in such a case it is immaterial who was the first to attack unless it be shown that the accused were acting in the right of private defence. 6 Pat. L. T. 87.

—evidence of right of private defence should not be ignored although the accused set up another defence. 4 P. L. R. 1922.

—the person pleading self-evidence must establish the circumstances under which each blow that causes an injury to a member of the opposite party is inflicted. 104 L. C. 454; 28 Cr. L. J. 838

S. 98. (Right of private defence against person of unsound mind.)

See, ss 78, 79, 82-85.

S. 99. (Acts against which there is no right of private defence).

—when an officer makes a search in good faith and without malice but without any warrant, the accused cannot set up the illegality of the officer's proceeding as justification of his obstruction. 7 B H C. (Cr. C.) 50, 19 M. 349, (1917) 57 P. L. R. 1918.

—so also where a Civil Court-peon in giving delivery of possession of a share in a tank by ordering some fishermen to cast their nets in the tank and catch fish, was assaulted by the accused, it was held that whatever mistake may be in the procedure of the Munsiff in giving the direction in the writ, the accused had no right of private defence against the peon who was a public servant acting under colour of his office in good faith. 18 C. W. N. 548.

—when an Income Tax Officer whose notice to produce account books is not complied with, forcibly enters on the premises and takes possession of the books and remains there though asked to go away, this section does not deprive the owners of their right to turn him out. 95 L. C. 308; 1926 Lab. 326. 27 Cr. L. J. 772; 27 Punj. L. R. 298.

—resistance to an officer, acting on a wholly illegal warrant is justified. 11 C. W. N. 836, 16 C. W. N. 1078.

—offering resistance to an illegal order of arrest is no offence 1930 Lab. 318; 1930 Cr. C. 396; 31 Punj. L. R. 285; 121 L. C. 734; 31 Cr. L. J. 294.

—where articles protected from attachment are attached, 21 M. 296, or where the property of a person was wrongfully attached as the property of certain absconders, 29 O. 417.

S. 99. (Acts against which there is no right of private defence)—contd

resistance to them was not justifiable But see 13 B. 168, 24 C. 320, 324

—there exists a right of private defence in a case where the alleged offender does not know and has no reason to believe that the person doing the act was a public servant 22 A. L. J. 501: 1924 All. 645.

—even if the arrest by the Police is wholly illegal the person arrested is not entitled to use more force than is necessary for protection against the illegal arrest. 94 I. C. 404; 27 Cr. L. J. 628: 1926 Sind 190

—even if the warrant of attachment is illegal an accused cannot plea a right of private defence of property when he is charged under s. 323 I. P. C. 26 P. L. R. 290.

—where a smuggler had reasonable ground for believing that an Excise Inspector in pursuing him intended to cause death or grievous hurt he did not exceed the right of private defence in cutting the Inspector on thigh. 3 U. B. R. 176.

—resistance to unauthorised search. 6 C. L. J. 753 and to the execution of an illegal warrant. 25 C. 320, 11 C. W. N. 836: 6 C. L. J. 127 are justified. But resistance to execution of a warrant for arrest of a debtor not signed but initialled was not justifiable 8 All. 298, and resistance to the Police in execution of an order under sec. 145 Cr. P. C. not strictly legal, to take charge of crops, by seizing several men of the Police party, carrying them off, into confinement, was held to be punishable. 9 C. W. N. 125.

—resistance to licensed vaccinator unlawfully attempting to take lymph from the arm of a person who objected to it was held

of the right
14 B. 441.

section, no matter which party makes the first attack. 35 C. 368, 384, 443, 17 Bom. L. R. 388, 3 Bom. Cr. C. 100.

—when there is time to have recourse to the protection of
take law into his own
ence. 35 C. 103, 7 W.
erson in possession of
ry of the marauders.

R. 47, 10 C. C. 196 nor
the law should be invoked to oppress person, (1896) P. J. L. B. 219 and it is not desirable that a man should submit to the deprivation of property in his possession without self-defence, and trust to recover it by the tedious operation of a case in the Civil Court. 2 W. R. 59,

—the extent to which the exercise of the right of self-defence is justified depends not on the actual danger but whether there was a reasonable apprehension of such danger. 81 I. C. 113; 25 Cr. L. 625, 28 M. 454, 1925 Lah. 49.

S. 99. (Acts against which there is no right of private defence)—*contd.*

—the right of private defence against an injury apprehended to be done by public servant extends only to those cases in which there is a reasonable cause of apprehension of death or grievous hurt. 105 I. C. 817; 1927 Lab. 706; 9 Lab. L. J. 424.

—even where the right of private defence is not pleaded, the court on finding on the evidence that the accused acted in the exercise of such right is bound to take cognizance of this fact. 26 Cr. L. J. 501; 1924 All. 645; 85 I. C. 245.

—the plea of private defence may be taken in the appellate court though in the trying court the accused altogether denied the offence and did not take this plea. 1926 Nag. 202.

—where a tree belonging to a tenant is attempted to be carried by a zamindar's men the tenant has a right of private defence of property. 81 I. C. 181; 25 Cr. L. J. 693; 1924 All. 441.

—S. 99 is inapplicable to a case where a police officer attempted to snatch a *kulhori* from a person, in trying to prevent which injuries were inflicted on him. The possession of the *kulhori* not being forbidden by law, the act of the police officer is wholly without jurisdiction. 6 Lah. 392; 90 I. C. 927; 26 Cr. L. J. 1631; 26 Punj L. R. 808.

—where the complainants are aggressors the accused in possession has the right of private defence. 18 C. W. N. 275, 24 C. J. 111.

of private defence more harm than
5 W. R. 33, 13 W. R. 35, 4 B. L. R.

—killing the deceased for attempting to take a pickaxe. 6 W. R. 89 killing persons unarmed ploughing a field believed by the accused to be their field, 18 W. R. 29, killing a weak old woman found stealing at night, 5 W. R. 33, subjecting a thief to gross maltreatment when he was fully in the power of the accused and helpless, 14 W. R. 63, deliberately killing a thief with pickaxe to prevent his escaping, 5 W. R. 73, 6 W. R. 50, confining a trespasser to the police, 13 W. R. 64.

tree and fell down and the ground and thereby attacking the deceased spears, clubs etc. and cases where more harm than was necessary was caused, and the accused were held to have exceeded the right of private defence.

—If the accused are justified in resisting the stealing of their crops, they are not members of an unlawful assembly simply because some have exceeded the right of private defence but if they continue in it after others have exceeded the right they are also guilty. 36 C. 296, 39 C. 896.

—in case of civil dispute the M. should instead of convicting the accused direct the complainant to seek his remedy in the civil court.

S. 99. (Acta against which there is no right of private defence)—*contd.*

26 P. L. R. 437; 7 Leb. L. J. 339; 1925 Lah. 599. 92 I. C. 215. 27 Cr. L. J. 231.

—where a man strikes another it is not easy for the man who is so struck to calculate with accuracy the exact force which he can use in defence. Even if he uses more force he is protected by law. 86 I. C. 218. 26 Cr. L. J. 730; 26 Punj L. R. 14; 1926 Lah. 514.

—every one has got a perfect right to employ force within limits for the purpose of protecting his property against forcible invasion and also to say that he purports to do so in the event of a threatened forcible invasion taking place. But he is not entitled to resort to the use of force for the purpose of recovering his property. 1925 Nag 142.

—where the matter was not urgent, no serious loss of property was threatened and there was ample time to have recourse to the authorities, a plea of private defence of property will not be accepted. 26 P. L. R. 267; 91 I. C. 39. 27 Cr. L. J. 7; 1926 Lah 516.

—the right of private defence of *property* does not avail a man when he has had time to have recourse to civil authorities. He cannot take possession by force or show of criminal force even against a trespasser. 74 I. C. 73; 24 Cr. L. J. 745.

—if a man is entitled to protect his own life by using a *lathi* it is impossible to weigh the force of the blows which he used for that purpose as it is said in "golden scales" and to adjudicate with great nicety as to the exact amount of force which would be justified. This of course, provided that no undue advantage is taken. 71 I. C. 605. 24 Cr. L. J. 189.

—when once the court has found that a right of private defence exists it is very difficult to expect the accused to weigh "with golden scales" what maximum of force is necessary to keep that right. 73 I. C. 975; 24 Cr. L. J. 735; 1923 All. 357.

—where the person injured was obstinate and had received 12 blows all causing only simple hurt, probably all the blows which he received enabled the accused to effect the purpose of

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S. 100. (When the right of private defence extends to the causing of death).

—the violence inflicted must be proportionate and commensurate with the quality and character of the act it is intended to meet, and what is done in excess is not protected. 2 A. W. N. 179

S. 100. (When the right of private defence extends to the causing of death)—*contd.*

—in defending oneself from a man armed with a stick it is practically impossible, in the heat of the moment to calculate with accuracy the exact force which one is entitled to employ in self-defence. 88 I. C. 218: 1925 Lab. 514: 26 Cr. L. J. 730: 26 Punj. L. R. 14.

—a man is not justified in shooting another who is about to arrest him unless there is apprehension that any of the acts mentioned in this section will ensue. 1 P. R. 1880.

—where one of the party of the deceased struck a blow on the accused which felled him to the ground and the accused rising up inflicted a blow on the head of the deceased causing his death the accused did not exceed the right of private defence. 13 C. W. N. 1180, 17 C. L. J. 394.

—where one party gave a blow with his *sling* and the other gave him a lathi blow on his head and knocked him down, the latter could plead the right of private defence. 1929 Lab. 443: 11 Lah. L. J. 80: 30 Punj. L. R. 97: 1929 Cr. C. 2: 120 I. C. 185: 31 Cr. L. J. 47.

—the accused reasonably anticipating grievous hurt to himself from the blow of heavy weapon has a right to use his spear to defend himself even to causing death. 9 Burma. L. R. 191, 10 B. L. R. 99, 6 P. L. R. 49, 21 P. L. R. 20 (1919), 1 P. R. 1920, 72 I. C. 520: 24 Cr. L. J. 408.

—where the accused was attacked by three men armed with lathies and struck a blow killing one of them, he had reason to apprehend that they might cause him grievous hurt, so he was not guilty. 89 I. C. 249: 26 Cr. L. J. 130: 1925 Lab. 370: 26 Punj. L. R. 496.

—an assault on a man violating a girl is justified under Cl. 3. 16 C. W. N. 440.

—where the accused cannot establish that voluntarily causing the death of his assailant was necessary for the purpose of defence he cannot plead the right of private defence. 41 P. R. 1834, 36 P. R. 1879.

the extent to which the right of self-defence
but whether there was
81 I. C. 113: 25 Cr. L. J.

—a person in order to defend himself may kill his adversary provided he has a reasonable apprehension that otherwise he himself will be killed. 88 I. C. 455: 26 Cr. L. J. 1143: 1925 Mad. 1069.

—the burden of proving the existence of circumstances bringing the case within any of the general exceptions vests upon the accused. Sec. 100 gives this right of private defence of the body only against actual assailants and not against those who may in the future when re-inforced by others become assailants. 3 Lab. 144: 4 Lab. L. J. 91: 68 I. C. 113: 23 Cr. L. J. 513.

S. 100. (When the right of private defence extends to the causing of death)—*contd.*

—a man who is assaulted is not bound to modulate his defence step by step according to the attack before there is reason to believe that the attack is over. He is entitled to secure his victory, as long as the contest is continued. Where the assault has once assumed a dangerous form, every allowance should be made to one, who, with the instinct of self preservation strong upon him, pursues his defence a little further than to a perfectly cool bystander would seem absolutely necessary. 1923 Lah. 155

—where the wife of the accused was being assaulted by her brother and she cried out she was being killed and the accused going to him saw her being assaulted and struck one blow on the assailant who died, held that the accused acted in private defence 94 I. C. 361 1926 M. W. N. 212 27 Cr. L. J. 617

—the accused must satisfy that he had the right of private defence 1923 All. 277

—where the accused provokes a quarrel and tries to hit a person and afterwards runs for his safety from a counter-attack with *latris* made on him and after running at some distance finds that he cannot escape and turns round and hits the person who dies three days after, the accused acts in self defence and cannot be convicted of grievous hurt. 23 A. L. J. 131 : 85 I. C. 382 : 26 Cr. L. J. 542 1925 All. 313.

—where the deceased was the aggressor and both he and his

—where the accused was escorting ladies according to their wishes and was obstructed by the opposite party who levelled a gun against the accused and the accused stabbed the person obstructing, he was not guilty of murder. 86 I. C. 45 : 26 Cr. L. J. 669 : 23 A. L. J. 68 : 1925 All. 319.

—when one of two accused inflicts fatal injury in exercise of his right of private defence the other accused can on no account be held responsible for the same. 89 I. C. 249 : 26 Punj. L. R. 496 : 26 Cr. L. J. 130 : 1925 Lah. 370.

S. 101. (When right extends to causing any harm other than death).

—apprehension of personal violence to a public servant while acting in execution of duties gives him the right under this section to fire his gun and cause a wound to the assailant. 5 P. R. 1901.

—one party attacked the other party while in exercising right of retaking their own property and killed one of them, but some of their party were wounded, held that the attacking party were guilty but not the other party. 3 W. R. 47.

S. 107. (Abetment of a thing)—*contd.*

—unintentional aiding is not abetment. 47 A. 263: 84 I. C 714: 1925 All. 230: 26 Cr. L. J. 362.

—a person who identified another person who intended to cheat the Treasury officer by personation did so on the assurance of another in whom he had confidence without letting the Treasury officer know that he did so on such assurance, held that he could not be convicted of the offence of abetting unless it is definitely proved that he knew that the offence was being committed 1929 Pat. 157: 10 Pat. L. T 657: 116 I. C. 753: 30 Cr. L. J. 642

—abetment being itself an offence under sec. 40 attempt to commit the offence of abetment is punishable under s. 511. 24 Bom 287: 1 Bom. L. R. 678, (1887) P. R. No 49 of 1887.

—an appellate court cannot find a man guilty of abetment of an offence on a charge of the offence itself. 33 M. 264, 11 B. H. C. R. 240. *Contra.* (1912) M. W. N. 725.

—in order to convict a person of abetting the commission of an offence it is absolutely necessary to convict him with those steps of the transaction which are criminal. 20 W. R. 41.

—a conspiracy may be proved by the surrounding circumstances and the conduct of the accused both before and after the commission of the offence 9 Bom. L. R. 347.

S. 108. (Abettor).

—a person cannot be convicted of abetment of false charge for having given evidence in support of such charge, because the section does not contemplate any act of subsequent abetment. 9 B. L. R. Ap. 16, 18 W. R. 28, 10 C. L. R. 4.

—the offence of abetment depends upon the intention of the abettor and not upon the act actually done by the person abetted. 21 W. R. 8.

—the offence of abetment is a substantive one and the conviction of the abettor does not depend upon the conviction of the principal. 1 Bom. 15, 18 W. R. 32, (1855) P. R. No. 20 of 1855.

—an offence can be abetted though the means suggested can not physically be applied to cause effect constituting the offences (1885) P. R. No. 20 of (1885), but it has been held to be doubtful whether abetment of murder by sorcery or other impossible means is an offence under this Code. 10 B. H. C. 75.

—if a man commits a criminal act by an innocent agent the employer and not the agent is guilty for the act. 18 A. W. N. 147, 14 C. P. L. R. 192.

—an offence is by definition or description an offence under the

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S. 108. (Abettor)—contd.

Code, that is, when an abetment of an offence is punishable under s. 109 or s. 116 or some other provision of the Code, then the abetment of such abetment is also an offence. 28 Cr. L. J. 370 : 46 C. 607 : 22 C. W. N. 1045 : 48 I. C. 817 : 20 Cr. L. J. 49

—instigating a person to abet the commission of an offence is punishable under this section although the offence may not be committed, (1882) P. R. No. 24 of 1882, 4 C. 366, 18 W. R. 32.

—mere knowledge of a design to commit an offence without the proof of instigation does not constitute abetment, 1886 (Weir) 3rd, ed 187 nor the mere subsequent knowledge of the offence constitutes abetment 2 W. R. 40

—a person cannot be convicted both as principal and as abettor. 4 W. R. 23 37.

S. 108 A (Abetment in British India of offence outside).

—the section was inserted by way of amendment to remove the difficulty that arose from the decision reported in 19 Bom. 105 which held that an abetment in British India of an offence committed in foreign territory was not an offence.

S 109. (Punishment of abetment where no provision is made.)

—in a *Suttee* case one ordered the pile to be lighted and the other induced the woman to return after she fled away, the former was held to be guilty of abetment of culpable homicide and the latter of suicide only. 1 R. J. P. J. 174.

—one who takes active part in the preparation of a document but not in the forgery of the name of the executant, commits abetment of forgery. 25 C. 207, 14 Bom. L. R. 267 : 1 Bom. Cr. C. 130.

—in a case of abetment of forgery when the abettor is the instigator heavier punishment should be inflicted on him than that imposed on the principal offender. 101 I. C. 493 : 28 Cr. L. J. 461 : 9 Lah. L. J. 103.

—where a Hindu gave his daughter eight years old in marriage to a person a second time during the lifetime of the former husband he was held to be guilty under this section read with s. 494 although her daughter was not guilty of any offence. 6 C. W. N. 343, 14 M. 364, 16 All. 88, 26 M. 463.

—there can be no abetment of the offence of kidnapping after the person has once been taken out of the custody of the lawful guardian. 23 A. W. N. 233, 2 C. W. N. 81, 19 All. 109 (1893) P. R. 3 Cal. 969, 1 M. 173.

—aid by some act or he committed in

time for of theft and receiving stolen property. 3 All. 181.

—the section of the principal offence and the section the chapter of abetment must be mentioned in the charge. 3 (Cr. L.) 5, 1 W. R. (Cr. L.) 9.

S. 109. (punishment of abetment where no provision is made)—*contd.*

—the offence of abetment by way of conspiracy does not require sanction, though criminal conspiracy itself requires it. 35 C. L. J. 279: 26 C. W. N. 680: 49 C. 573: 69 I. C. 145: 23 Cr. L. J. 657, 89 I. C. 305: 26 Cr. L. J. 1329: 1925 Rang. 296.

S. 111. (Liability of abettor in case of different act done.)

—if one chooses to run the risk of putting another in motion to do an unlawful act, the latter for the time being represents the former as much as he does himself and the instigator is responsible for

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common intention and which cannot be said to have been a probable consequence of the abetment, the abettor is not guilty for the abetment of that offence. 5 W. R. 75, 7 W. R. 61, 6 All. 691.

—where this solitary injury received by the deceased which proved fatal was inflicted by one of the two accused, in exercise of his right of private defence the other accused could on no account be held responsible for the same. 7 Lab. L. J. 167: 1925 Lab. 370.

S. 114. (Abettor present when offence is committed.)

—ss. 109 and 114 supersede the English Law as to principals in the first and second degrees and accessories before the fact. The provisions of the Penal Code cover all the cases provided by that law, and contain the whole law in India on the points. 41 C. 1072

—s. 114 is a provision which is only brought into operation when circumstances amounting to abetment of a particular crime have been proved and then the presence of the accused at the commission of that crime is proved in addition. Abetment does not in itself involve the actual commission of the crime abetted. It is a crime apart. 52 C. 197: 41 C. L. J. 240: 6 Pat. L. T. 169: 29 C. W. N. 181: 1925 P. C. I.: 85 I. C. 47: 26 Cr. L. J. 439: 27 Bom. L. R. 148: 23 A. L. J. 314: 48 M. L. J. 543 P. C.

—the section is evidentiary not punitive. Because participation *de facto* may sometimes be obscure in detail, it is established by the presumption *juris et de jure* that actual presence plus prior abetment can mean nothing else but participation. The presumption raised by s. 114 brings the case within the ambit of a. 34. *above case.*

—this section applies only when the abettor has done something by way of abetment and has been present at the time of commission of the offence. 3 L. B. R. 275, F. B.

—this sec. requires two things (1) abetment and (2) presence of the abettor when the offence is committed. 7 W. R. 49, 8 C. W. N. 519, 27 C. 566.

—this section does not apply unless the person present abetting the offence would, if absent, have been guilty of the abetment. 29 C. 496.

S. 114. (Abettor present when offence is committed)—contd.

—where an abetment consists only of participation in the actual commission of the offence, sec. 109 and not this section is applicable. 15 P. R. of 1899

—this sec. does not apply where the abetment charged necessarily requires the presence of the abettor: under this section the abetment must be complete apart from the presence of the abettor. 42 C. 422.

—to bring the case under this section the abetment must be complete apart from the presence of the abettor. When it is not

—a person present abetting an offence is to be deemed to have committed the offence though he does not, in fact do so any more than a principal in the second degree does. (1869) M. H. C. Ap. 37, 17 W. R. 52, 8 B. H. C. Cr. 164, 23 W. R. 11.

—a person who is punishable under a particular section of the I. P. C. read with s. 114 is punishable as a principal and not as an abettor and is guilty of the substantive offence and not merely of its abetment. 1929 Rang. 203; 30 Cr. L. J. 961; 1929 Cr. C. 177; 118 I. C. 637.

—where the charge is for an offence under s. 496 I. P. C. and for abetment thereof it is necessary that there should be a complaint under s. 198 Cr. P. C. 1930 M. W. N. 694.

s. 114 implies that the abetment had been completed before actual offence was committed. The sec. deals with a person who would be guilty of abetment independent of any act done at the time of the offence i. e. a person whose abetment is complete apart from his presence. 82 I. C. 262; 25 Cr. L. J. 1254; 21 L. W. 19.

—s. 114 applies to a case where a person abets the commission of an offence sometime before it takes place and happens to be present at the time of commission of the offence and is not applicable to a case where the abetment is at the time of commission of the offence and the abettor helps in the commission. 97 I. C. 938, 1927 Mad. 97; 27 Cr. L. J. 1198.

—where the accused was not only present at the scene of occurrence but also actively instigated the assailants to kill their victim who was consequently killed the accused was rightly convicted under ss. 114 and 302 I. P. C. 27 Punj. L. R. 716; 8 Lab. L. J. 509; 99 I. C. 117; 28 Cr. L. J. 85.

—where the accused instigated others to commit criminal trespass under s. 447 I. P. C. and were present at the time of commission of the offence they were guilty of the actual offence of criminal trespass. 97 I. C. 737; 1926 Bom. 512; 27 Cr. L. J. 1153; 28 Bom. L. R. 1029.

S. 116. (i) Abetment of offence punishable with imprisonment, if offence be not committed, (ii) if abettor or person abetted be a public servant whose duty it is to prevent offence).—*contd.*

spy and the money was arrested in his hand, held that A committed abetment of bribery and was punishable under s. 161 read with section 116 I. P. C. 28 C. L. J. 370: 46 C. 607: 22 C. W. N. 1045: 48 I. C. 817, 20 Cr. L. J. 49. In the above case, *J. Richardson* held that whether the instigation came from B, or from A, A was guilty as he offered the bribe, but *J. Huda* held that as the instigation came from B, A was not guilty of an offence. (See also the following Bombay case) It was also held in the same case that when the abetment of an offence is punishable under s. 109 or s. 116 the abetment of such an abetment is also punishable under one or other of those sections as the case may be.

not, 67 I. C. 818: 24 Bom. L. R. 534: 23 Cr. L. J. 466.

—where the inference suggested by what happened at the interview is equivalent and where the explanation put forward by the accused is reasonably possible, the theory of innocence cannot be said to have been sufficiently negated by the prosecution, *above case*.

—the illustration (a) of s. 116 is only an example of abetment of an offence under s. 161 I. P. C. There are many other ways of instigating a public servant to commit an offence under s. 161 besides by means of a direct offer of a bribe. It would be establishing a very dangerous precedent to hold that an officer is protected if he agrees to allow his official acts to be swayed by the motive of accepting a gratification to be used not for his own personal benefit but for some public object, 67 I. C. 818: 24 Bom. L. R. 534: 1923 Bom. 44: 23 Cr. L. J. 466.

—where to drop the charge under the first cause the offence therefore he held 1928 Lah. 840:

—in order second part of servant whose prevent the commission of the very offence abetted. 3 Pat. 647.

—where the accused was charged under s. 116 I. P. C. with punishment awarded as to servant to prevent

S. 116. ((i) Abetment of offence punishable with imprisonment, if offence be not committed, (ii) if abettor or person abetted be a public servant whose duty it is to prevent offences) —*contd*

—where an accused person offered a bribe to a Magistrate who allowed it to be delivered to him, not in order to its acceptance but in order to have evidence of the transaction, the accused was rightly convicted under ss. 161 and 116 I. P. C. 38 I. C. 439; 18 Cr. L. J. 327-10 Bur. L. T. 252; 9 L. B. R. 52.

—offer of bribe to public officer, who is *functus officio* is no offence and the public officer commits no offence by taking it. 57 M. L. J. 239; 1929 M. W. N. 695; 119 I. C. 315; 30 Cr. L. J. 1055; 1928 Mad. 756

—the offer of a bribe to a Sub-Inspector who was an expert in the Finger Print Bureau and was summoned as an expert witness to induce him to give evidence in favour of the accused's party, is an offence under ss. 161 and 116 I. P. C. Such expert is a public servant and his giving expert evidence is one of his duties as such. 69 I. C. 445 23 Cr. L. J. 717.

S. 117. (Abetting commission of offence by the public or more than ten).

—to apply this section the offence abetted must have been intended to be committed by the public or by more than ten persons collectively and conjointly and not separately: so where the accused instigated twelve coolies to break their contract, each breach of contract being a separate offence the accused was not punishable under this section. 3 W. R. Cr. 24.

—this sec. relates not to the offence of abetment only but to abetment by the public generally or by any member or class of persons exceeding ten. 33 Bom. L. R. 56.

—where the accused instigated the formation of an association which was unlawful under s. 15 (2) (a) of the Criminal Law Amendment Act and therefore abetted its formation under ss. 107 and 108 I. P. C. and as any one becoming a member of that association or contributing funds to it would be guilty of an offence under s. 17 (1) of the Criminal Law Amendment Act, the accused abetted an offence and as the offence abetted was committed by a class of persons exceeding ten the accused was punishable under s. 117, I. P. C. 5 Lah. 1.

—where the accused was charged under s. 17 (2) of the Criminal Law Amendment Act for having urged the Sikhs to form an association to be known as the "Sikh League" and for having urged them to join it, the accused was held liable under s. 17 (c) of the Criminal Law Amendment Act. 89 I. C. 462; 30 Cr. L. J. 1055; 1928 Mad. 756

—an offence under s. 117 I. P. C. and s. 17 (1) of the Criminal Law Amendment Act can be tried as a summons case. 33 B. L. R. 353.

S 118. (concealing design to commit offence)

—ss. 118, 119, 120 deal with the concealment of a design by persons other than the accused to commit the offence charged 1 Bom L. R. 351.

—a person is not punishable under this section unless he is legally bound to give information or if he has not concealed the design by some overt act. 4 W. R. Cr. 2, 34 P. R. 1882.

S. 120 A (Criminal conspiracy).

—conspiracy consists simply in the agreement or confederacy to do some act, no matter whether it is done or not. 42 C. 957: 19 C. W. N. 676: 21 C. L. J. 331: 16 Cr. L. J. 497: 27 I. C. 513.

—this section is not applicable to offence committed before it came into force. 20 C. W. N. 292.

—overt acts may properly be looked at as evidence of the existence of a connected intention and in many cases it is only by means of overt acts that the existence of the conspiracy can be made out. But the criminality of the conspiracy is independent of the criminality of the overt act. 16 C. W. N. 1105: 15 C. L. J. 517.

—a conspiracy consists not merely in the intention of two or more but in the agreement of two or more to do an unlawful act or to do a lawful act by unlawful means. So long as such a design rests in intention only it is not indictable. When to agree to carry into effect the very plot is an act itself, and the act of each of the parties, promise against promise, *actus contra actum* capable of being enforced if lawful, is punishable, if for a criminal object or for the use of criminal means. 14 A. L. J. 688: 35 I. C. 991: 17 Cr. L. J. 431.

—in cases of an indictment for conspiracy when two people are indicted and are tried together either both must be convicted or both must be acquitted. So when three persons were charged with having entered into a conspiracy and two were acquitted the third person could not be convicted of conspiracy, whether the conviction be upon the verdict of the jury or upon his confession. 14 A. L. J. 688: 35 I. C. 991: 17 Cr. L. J. 431.

—the accused may legally be charged merely with the offence of criminal conspiracy. The mere association of an accused with any of the conspirators is not enough by itself to convict him of being a member of the conspiracy. 39 C. L. J. 151: 83 I. C. 513.

—where in the trial of a person for the offence of conspiracy to possess firearms and ammunition the evidence consisted mostly of police and officers and spies, the evidence of such persons should be scrutinised with a great deal of caution. 31 C. W. N. 239: 1927 Cal. 26: 100 I. C. 113: 28 Cr. L. J. 261.

—where the conspiracy alleged in the charge is one in which only three persons are said to have been participants and two of them are acquitted the other is entitled to an acquittal as a matter of course. 30 C. W. N. 94: 39 C. L. J. 264: 81 I. C. 824.

—where the proof of conspiracy depends upon proof of the participation of the accused in an overt act which itself amounts

S. 120A. (Criminal conspiracy)—*contd.*

to an offence the proper course is to put the accused on their trial for that offence. Where all that is shown against a person is evidence of the association with any of the conspirators that would not be sufficient to convict him of being one of the parties to the conspiracy, held on the evidence in the case, the accused were guilty of a conspiracy to get possession of arm and ammunition by illegal means and in contravention of the Army Act. 39 C. L. J. 511; 83 I. C. 513.

S. 120 B. (Punishment of criminal conspiracy).

—on a charge of conspiracy general evidence of conspiracy may be given before the proof of the particular fact that the accused took part in it. 42 C. 957; 19 C. W. N. 676. 21 C. L. J. 331. 29 I. C. 513; 16 Cr. L. J. 497.

cannot generally
facts proved in the
I. 292; 35 I. C. 999;
W. N. 1150

—In charge of conspiracy either all must be convicted or all must be acquitted. 14 A. L. J. 680, 17 P. R. 1915.

—where two persons are tried for an offence under s. 120-B,
if one is convicted and the other is acquitted of the charge

-B.
81
925

Cal 501, 30 C. W. N. 94.

—but where they are separately tried the acquittal of the one

—where the conviction of one of two accused under this sec is set aside in appeal the conviction of the other accused also must be set aside. 45 C. L. J. 204; 28 Cr. L. J. 449; 101 I. C. 431.

—where the accused with another person went to a place and met the second accused with a view to purchase from him fire-arms and ammunition but the arms were never produced nor there was evidence that the second accused possessed the arms at the time of negotiation, the accused might be still convicted under s. 120-B, because the overt act for the conspiracy consisted in the agreement of the parties and the same was proved. 31 C. W. N. 239; 1927 Cal. 265; 100 I. C. 113; 23 Cr. L. J. 241, (42 C. 95, 19 C. W. N. 676; 21 C. L. J. 331) *fol.*

—a charge of conspiracy may be established either by direct evidence of an agreement between the conspirators or by circumstantial evidence from which the court may presume a common concerted plan to carry out the unlawful design. O. 458; 1927 Sind. 161; 28 Cr. L. J. 426, 92 I. C. 419; 171: 27 Cr. L. J. 243.

S. 120B. (Punishment of criminal conspiracy)—contd.

—when once the charge of conspiracy is framed, anything done in pursuance of the conspiracy forms part of the same transaction and can be tried at the trial for conspiracy. *above case*.

—the offence of abetment by way of conspiracy does not require sanction though criminal conspiracy itself requires it. *above case*.

—where the accused was convicted under ss 384 and 114 and also under s. 120 B but no sanction was obtained for trial under the latter section, held that the trial held on charges which did not require sanction along with such as are not cognizable without sanction *could not be separated and that the conviction should not be set aside as a whole* 33 C. W. N. 834, 1929 Cal 754; 1929 Cr C 409 57 C. 99

—the court cannot take cognizance of an offence under this section without sanction as required under s 196 (a) Cr. P. C., 25 C. W. N. 357; 22 Cr. L. J. 455, 61 I. C. 839.

—but sanction of the Local Government obtained after the framing of the charge is sufficient. 54 C 155; 101 L. C. 594; 1927 Cal. 296; 28 Cr. L. J. 466.

—sanction of the Chief Secretary is required to be proved; sanction bearing the signature of the Dy Secretary is not sufficient. 26 C. W. N. 878

—the accused were charged with conspiracy to cheat Govt. of large sums of money in the matter of the supply of some goods during the war. The charges were made under Ss 120 B and 420 I. P. O., held, though the charges were not clearly framed yet the accused were put upon sufficient notice of a charge of a conspiracy to commit an offence or offences under s. 420 I. P. C. 27 C. W. N. 821 1924 Cal 18.

s. 120-B and
s 364 read
the accused

S 121. (Waging or attempting to wage war or abetting waging war)

—"wages war" in this section must be construed in its ordinary sense, and a conspiracy to wage war, or the collection of men, arms and ammunition for that purpose is not waging war. 37 C 467.

—the offence of engaging in a conspiracy to wage war, and that of abetting the waging of war against the King, are offences against Penal Code only, and are not treason or instigation of treason. 7 B. L. R. 63

—s 121 does away with the distinction under the general law of punishment between abetment which has succeeded and abetment which has failed. 10 B. L. R. 105, 24 Bom. L. R. 885; .

and 193 can be joined

S. 121. (Waging or attempting to wage war or abetting waging war)—contd.

—the legislature has not thought fit to limit the periods within which prosecution may be commenced as in the case of the English Statute. 15 W. R. 25.

—forfeiture takes effect from the date of the commission of the offence. 8 B. L. R. 83

—the Calcutta Gazette and Gazette of India were admissible in evidence to prove the proclamation and official communication of the Government relating to the war. 15 W. R. 25.

—it may be tried by any court within the jurisdiction of which any member of the conspiracy does any act in pursuance of the originally concerted plan. 9 B. L. R. 36

—special sanction of the Government is necessary before prosecution under this section and power of the Local Government cannot be delegated to any other body or person. 37 C. 457, 29 Bom. 112 *dissented*, 15 C. W. N. 593

—a person who takes part in the organised armed attack on the constituted authorities, that attack having for its object the subversion of British Raj and the establishment of another Govt., is guilty of the offence of waging war against the King. 43 M. L. J. 108 : 1922 M. W. N. 71 65 I. C. 859 : 20 Cr. L. J. 203.

—so long as a man only tries to inflame feeling, to excite a state of mind he is not guilty of anything more than sedition. It is only when he definitely and clearly incites to action that he is guilty of instigating and therefore abetting the waging of war. It is not essential that as a result of the abetment the war should be waged in fact, but the main purpose of the instigation should be the waging of war. 24 Bom. L. R. 885 : 1922 Bom. 284, 34 B. 394 *fol.*

instigation is the act of suggesting or stimulation of another

Bom. 284.

—where in order to establish a republic in this country the accused actively suggested to his audience that they should use violence or stimulated them to use violence to achieve that purpose, he is guilty under this section but where upon the worst construction of the speech it merely amounts to a prophecy or even a threat that violence may be necessary in future it does not constitute an offence under this sec. 24 Bom. L. R. 885 : 1922 Bom. 284.

—in the course of committing a continuing offence like waging war there may be many minor incidents themselves constituting distinct offences. The validity of conviction under s. 121 is

not affected by other offences

49 M. 74 :

L. J. 1513 :

S. 121 A. (Conspiracy to commit offences punishable by section 121.)

—the essence of an offence under s 121 A is the agreement to do all or any of the unlawful acts mentioned in the section. It is not necessary that any act or illegal omission should take place in pursuance of the agreement. 1912 M. W. N. 207

—a conspiracy is a combination of two or three or more persons to do an unlawful act or to do lawful act by unlawful means. It consists not merely in the intention of two or more, but in the agreement of two or more to do an unlawful act, or to do lawful act by unlawful means; the agreement may be inferred from circumstances. It is not necessary that all should join in the scheme from the first; those who come in at a later stage are equally guilty, 37 C. 467, foolishness or ignorance does not mitigate the offence. 1 B. L. T. 27.

—association for music, gymnastic exercises and fencing with sticks amongst youngmen living in the same village or attending the same school are ordinary incidents of village or school life, and could hardly with propriety be proved as forming elements in any scheme or conspiracy to wage war against the King Emperor, and all the more so when they are shown to have been accompanied by a complete absence of secrecy and rather by a courting of publicity. 15 C. W. N. 593

—once reasonable grounds are made out for belief in the exercise of the conspiracy amongst the accused the acts of each objects are evidence against each such acts were done before or after his presence or in his absence.

—an indictment or information for conspiracy must contain a statement of the facts relied upon as constituting the offence, in ordinary and concise language with as much certainty as the nature of the case will admit. *above case*.

—a letter written by a stranger to a conspirator which is not shown to have been received or replied to or otherwise acted upon by the latter, is not sufficient to establish the former's connection with the conspiracy so as to make his acts done in pursuance of the conspiracy. *above case*.

—for a conspiracy to wage war, no act or illegal omission is necessary, the agreement of two or more suffices. 38 C. 559.

—in cases of conspiracy the agreement between the conspirators proved, but only inferred from the were two persons took a house in of fire arms was found with tools and implements, and work had been actually done to some of the parts of fire-arms, the court may and ought to infer a conspiracy to manufacture arms. 42 C. 1153 : 21 C. L. J. 201.

—joint trial under ss. 121, 121 A, 122 and 123 is not bad for misjoinder of persons or charges. 27 C. 467.

S. 122. (Collecting arms etc. to wage war.)

—preparation is distinguished from attempt and intention to commit crime. Preparation consists in the devising or arranging the means or measures necessary for the commission of the offence. 1 All. 316, 3 M. 4, 25 Mad. 726.

S. 124 A. (Sedition).

Intention and its proof.

—the section coupled with the explanations thereto contains in clear and concise language the law in India relating to sedition which is practically identical with the law in England. 38 C. 253.

—the essence of crime consists in the intention with which the language is used. 34 C. W. N. 1095; 30 C. L. J. 289; 23 C. W. N. 1057, 10 Bom. L. R. 848, 12 Bom. L. R. 674, 22 B. 122, 2 Bom. L. R. 286, 23 C. W. N. 986, *contra*, 1 P. R. 1905 and it is a question of fact 34 B 378; 12 Bom. L. R. 21 and it may be inferred from the particular speech, article or letter. 20 All. 55 F. B., 10 Bom. L. R. 848.

—In a charge under s. 124 A the prosecution must prove to the hilt that the intention of the writer or the speaker is to bring or attempt to bring into hatred or contempt or excite or attempt to

intention of the writer is to do the article as understood by the people to whom it is addressed, also the offending article must be read as a whole, in a fair, free and liberal spirit. 45 C. L. J. 638; 1927 Cal. 698; 28 Cr. L. J. 723; 103 I. C. 771

—direct proof is not necessary to prove intention, it will be presumed from language and conduct of accused who must rebut presumption 1925 Lab. 16.

—intention is correlated with the natural consequences which would follow from a particular act. 1930 All. 324; 122 I. O. 596; 1930 Cr. C. 452; 31 Cr. L. J. 429, 31 C. W. N. 1095, but it is only right to bear in mind that the articles alleged to contain seditious matter should be read not in any spirit of narrow criticism but in a fair, free and liberal spirit and if any doubt should arise with regard to intention benefit of doubt should be given to the accused. 34 C. W. N. 1095.

—a publisher of an article must be deemed to intend that which is the natural result of the words used having regard to the character and description of people who are expected to read them. 1929 Cal. 277; 117 I. C. 834; 30 Cr. L. J. 850, 37 M. L. J. 139, 46 I. A. 176, 2 Bom. L. R. 286) *Rel. on*, 56 C. 1085; 121 I. C. 749. 1930 Cal. 220; 1930 Cr. C. 220.

—a speech must be read as a whole in a fair, free and liberal spirit. The intention of the speaker must be gathered from the speech itself and the effect it is likely to create on the

S. 124A. Intention and its proof—*contd.*

audience to which it is addressed. 1929 Lah. 817 : 1929 Cr. C. 442, 29 Cr. L. J. 381 : 108 I. C. 372

When a speaker, writer or publisher is charged with having
 whether or not the
 on 20 All. 55 F. B.
 or attempting to
 disturbance, if the
 Government that
 22 B. 112

—In judging the question of intent, the publisher must be deemed to intend that which is natural result of the words used, having regard among other things, to the character and description of that part of the public who are to be expected to read them. 21 Bom. L. R. 867 F. B.,

—in case of speeches they must be read as a whole in a fair, free and liberal spirit; it should be viewed in a free, bold, manly and generous spirit towards the speaker. 19 Bom. L. R. 211.

—In a case of newspaper article its meaning must be taken from the article as a whole, not from isolated passages 38 C. 253; 15 C. W. N. 141, 38 C. 214, 45 C. L. J. 638, 46 C. L. J. 156, 105 I. C. 228. 1927 Cal. 751 28 Cr. L. J. 900, 83 I. C. 638: 1925 Pat. 99.

. whether the intention of the accused was to
 must be taken
 of his act must

. defence of previous
 seditious speeches is inadmissible. But if the accused pleads that
 may be established by putting
 here the
 on prior

—seditious articles not forming the subject of charge but published in the same paper, and speeches which form a part of a series of speeches some of which are the subject-matter of the charge, are admissible in evidence to prove the intention of the accused, 35 C. 945, 32 M. 3, but such articles are not admissible in evidence in the absence of proof of identity. 33 C. 253.

—a writing made sometime after the committing of an offence under a, 124 I. P. C. is admissible in evidence under sec. 14 of the Ev. Act. 1928 Bom. 78: 30 Bom. L. R. 315: 103 I. C. 30: 29 Cr. L. J. 320, 10 Bom. L. R. 848 Ref.

—a M. cannot rely on speeches not marked in the case as they are inadmissible in evidence. 1930 Lah. 870: 31 P. L. R. 625: 1930 Cr. C. 914.

—but articles published in the same paper and forming the subject-matter of some of the charges may be considered together for the purpose of proving intention. 34 C. W. N. 1095.

S 124A. "Whoever"—contd.

the mere fact of declaration, but must consider the surrounding circumstances and probabilities to arrive at a conclusion. 12 Bom. L. R. 674; 34 B. 378.

—when there is no heading or footnote that the editor does not accept responsibility for the opinion expressed in the letters appearing in correspondence columns, the editor is responsible for sedition if the article is in the form of an undesigned letter appearing in correspondence column. 35 C. 141 p. 153.

—if an article is charged on the ground that it says more than what appears on the face of it, it is the duty of the prosecution to show that it has that guilty meaning or intent. 38 C. 214.

—in the case of small pamphlet, the title page of which contains seditious matter prominently displayed and printed in a small space, a court can pass no knowledge of the contents on the title page to be determined on the facts. 146: 26 Cr. L. J. 302: 1925

146: 26 Cr. L. J. 302: 1925

—the mere fact that the accused's name appears on the title page of a pamphlet is not sufficient to conclusively attribute its authorship to the accused. 88 I. C. 356: 1925 Leh. 569. 26 Cr. L. J. 1124: 26 Punj. L. R. 403.

"Words either spoken or written."

—if the seditious writing is shown to be in the handwriting of the accused and it is further proved that the contents were in fact printed and published, there is sufficient evidence of publication by the accused. 39 C. 522

—memories of the witnesses as to the actual words used should not be relied upon after a considerable time. 1930 Leh. 371: 31 Cr. L. J. 168: 120 I. C. 798 1930 Cr. C. 231

"Brings or attempts to bring."

—seditious writing, while it remains in the hands of the author unpublished, will not make him liable. Publication of the same is necessary. 22 B. 122.

—sending a seditious matter by post addressed to a person
body of students
39 C. 606. When
publication but is
attempt to commit

—on a charge under s. 124 A, the sending of a pamphlet by post, addressed to a private individual, not by name but by designation as the representative of a large body of students (e.g. captain of a school) amounts to publication. 39 C. 606: 16 C. W. N. 812

—the writer may be guilty, no matter how guardedly he attempts to conceal his real objects, but the printer and publisher cannot be punished unless the concealed object is established by evidence. 38 C. 253: 15 C. W. N. 141.

S 124 A "Brings or attempts to bring"—contd.

—an attempt to excite feelings of disaffection is equivalent to an attempt to produce hatred of the Government. 22 B. 152 F. B.

—"attempt" is the progress towards the actual commission of the offence. It does not matter that the progress was interrupted 34 B 378. 12 Bom. L. R. 21, nor the attempt to constitute the offence need be successful. 8 Bom. L. R. 421, 10 Bom. L. R. 849, 2 Bom. L. R. 286.

—attempt is an act done in part execution of criminal design amounting to more than mere preparation, but falling short of actual consummation, and possessing, except for failure to consummate, all the elements of the substantive crime. In other words an attempt consists in intent to commit a crime combined with doing of some act adapted to but falling short of its actual commission, it may consequently be defined as that which if not prevented would have resulted in the full consummation of the act attempted. 30 C. L. J. 289 Sp. Bench.

—to determine whether the offence of sedition was committed by publication of some article it is necessary to determine first the meaning of the article and then the intention of the writer. 2 Bom. L. R. 304.

—an attempt is complete as soon as the newspaper containing it is sold. 12 Bom. L. R. 21. 34 B. 378.

—it is sufficient for the purposes of the section that the words used are calculated to excite feelings against the Government and they were used with the intention to create feelings, 19 C. 33.

—existence of grievance is an excuse. 2 Bom. L. R. 304

—posting papers from the place of publication constitutes in law publication at the place where they are sent. 22 B 122.

—where the accused collected together serious utterances from various quarters and published the book containing sentiments hostile and insulting to the Govt. it was rightly proscribed though the original sources from which it was compiled were not proscribed. 47 A. 293; 1925 All. 195; 26 Cr. L. J. 679. 23 A. L. J. 1: 86 I. C. 55 F. B.

Hatred or contempt or disaffection.

—the definition of sedition given in s. 124-A. contemplates hatred or contempt or disaffection towards His Majesty or the Government established by law in British India, and this apart from any intention of the offender. 35 C 141, p 153.

—hatred or contempt may be created by writing, imputing to the Government base, dishonourable, corrupt or malicious motives in the discharge of its duties or writings unjustly accusing the Government of indifference to the welfare of the people. 39 M. 1085.

—a man may criticise or comment on any act or measure of the Govt., legislative or executive, and freely express his opinion upon it. He may express the . . . measures and he may do so . . . perversely and unfairly. So long . . .

S. 124A. Hatred or contempt or disaffection—contd.

he will be protected by the explanation; but if he goes beyond that, and, whether in the course of comments upon measures or not, holds up the Govt. itself to the hatred or contempt of his readers, as for instance, by attributing . . . suffered by the people, or character, or imputing to it . . . or indifference to the welfare of the people, then he is guilty under the section and the explanation will not save him 22 B. 112 p 137 38 C. 253 p. 261.

—the law can't do anything with the feelings of hatred but it steps in when any attempt is made to excite that feeling in others. 8 Bom. L. R. 421.

—disaffection means a feeling contrary to affection, in other words, dislike or hatred, 19 C. 35, it is feeling and not the want of feeling. It is not the absence of affection. It is intended to express a feeling which can only exist between the ruler and the ruled 8 Bom. L. R. 421. It means political alienation or discontent a spirit of disloyalty to the Government or existing authority. It is a positive political distemper, and not a mere absence or negation of love or good will. It is positive feeling of aversion which is akin to disloyalty. 22 B. 152 F. B.

—It means hatred, enmity, dislike, positive contempt and every form of ill-will to the Government. Disloyalty is perhaps the best general term comprehending every possible form of feeling to the Government. 22 B. 112. It means Government established by law in British India. 20 All. 55 F. B.

—It means British rule and its representative as such, 22 B. 112. It means the person or persons collectively in succession who are authorised to administer the Government for the time being 8 Bom. L. R. 421, 19 Bom. L. R. 211, it includes both the Government of India and the local Government 39 M. 1085. It means the established authority which governs the country and administers its public affairs and includes the representative to whom the task of the Government is entrusted. 42 All. 233.

—as the Government acts through human agency and admittedly as the Civil Service is the principal agent for administration so when Civil Service en bloc is criticised the question whether disaffection is excited against the Government or not seems to be pure question of fact 19 Bom. L. R. 211.

—an article which attacks the police comes within this sec. because the police is one of the human agencies through which Government acts. 1929 Cal. 277: 30 Cr. L. J. 850 117 L. C. 834: 19 Bom. L. R. 211 *Rel on.* 56 C. 1085 121 I. C. 749: 1930 Cal. 220: 31 Cr. L. J. 313: 1930 Cr. C. 220.

—criticising the British Imperialists and bringing it into hatred and contempt is an offence under s. 124 A. 1930 Lah. 186: 1930 Cr. C. 129.

—person vilifying the British by holding up admired character as pattern is guilty under s. 124 A. 1930 Cal. 363: 1930 Cr. C. 539.

S. 124A. *Hatred or contempt or disaffection—cold.*

—advising a person to persuade others to adopt violence as a means of attaining a political goal is not less offensive than advising that person to commit violence himself for that purpose. 1930 Lah. 306 : 121 L. C. 76 : 31 Cr. L. J. 271 : 1930 Cr. C. 332.

—a speech inciting persons to expel Englishmen from India practically expresses a sentiment against the British Government in India. 1930 Lah. 39 : 121 L. C. 425 : 31 Punj. L. R. 11 : 31 Cr. L. J. 255 : 1930 Cr. C. 341.

—"Swaraj" means home-rule under the Government and the

themselves to
I. Advocating
such advocacy
C. W. N. 1032.

—in order to determine whether or not a speech constituted an attempt to excite hatred, contempt or disaffection, it should be viewed from the stand point of the type of persons to whom it was primarily addressed. 1 Rang. 211 : 71 L. C. 954 : 24 Cr. L. J. 842.

—where a person is prosecuted for an offence under s. 124 A, L. P. C. in respect of a newspaper article written by him the court must not look to single sentence or isolated expressions but take the article as a whole and give a full, free and generous consideration and amply deal with it, in a fair and liberal spirit not picking out objectionable sentences or strong words used nor should undue importance be given to inflated and turgid language. 1924 D. & C. C. 492 : 97 L. C. 629 : 1925 D. & C. C. 22 : 26 Cr. L. J. 78, 45 C. L. J.

ed that the Calcutta
out of motive, namely
part by favouring the
policy the writer was

rightly convicted under s. 124 A. 46 C. L. J. 156 : 105 L. C. 328 : 1927 Cal. 751 : 28 Cr. L. J. 900, 45 C. L. J. 638 : 103 L. C. 771 : 1927 Cal. 698 : 28 Cr. L. J. 723.

—when a newspaper article attributed to the Govt. and its personnel a deliberate policy of fomenting the communal strife

stirred
: 113

the
inter
766

"The Government established by law in British India"

not

against the existing form of Government and not against the rule of the Government. 1930 Cal. 244 : 34 C. W. N. 277 : 1930 Cr. C. 328.

24A. Explanations 1, 2 and 3.

—the object of the explanation 1 is a negative one to show that certain acts which might otherwise be regarded as exciting or attempting to excite disaffection, are not to be regarded so. 22 B. 112 p. 133.

—a man may criticise and comment upon any measure or act of the Government, whether legislative or executive, and freely express his opinions upon it. He may express the strongest condemnation of such measures, and he may do so severely, and even contemptuously, so long as he confines himself to the facts, and does not go beyond that, to the expression of contempt of his Government. 112, 38 C. 253;

—a publicist, a journalist, or a speaker, has no right to attribute dishonest or immoral motives to Government. Criticism, though harsh and uncompromising, must be free from the taint of language which is likely to arouse or calculated to engender feelings of enmity, hatred, or disloyalty against the Government. 10 Bom. L. R. 848, 35 C. 945.

—the writer of a newspaper is liable for any seditious letter published in the paper whether signed or not and for the extracts from other papers. 35 C. 141.

—every liberty is given to all men to express their opinions so long as they do not misuse or abuse that power to the injury of others, including among injuries to others, injury to the State. 8 Bom. L. R. 421, 37 M. L. J. 81.

—an article imputing wholesale bribery to the ministers of the law courts and lower officers of the Police force and attacking

—the word "Swaraj" does not necessarily mean Govt. of the country to the exclusion of the present Govt. Its literal meaning is "self Government" and its ordinary acceptance is "home-rule" under the Govt. 11 C. W. N. 1050, 39 M. 1085.

—allegations against the Home Government and not against the Indian Government is not an offence under this sec. 1930 Cr. C. 164; 1930 Lab. 156.

Disapprobation.

—"disapprobation" means disapproval and it is quite possible to disapprove of a man's sentiments or action and yet to like him, and so to be loyal to any one or the Government and at the same time to disapprove strongly of his or its measures. 19 C. 35, 22 B. 112, 38 C. 253.

S. 124A. Sanction and charge.

—defective sanction may be cured by way of amendment
 —commitment before sanction is defective because it does not
 contain words which form the
 substance of such a charge is defective
 in virtue of the ss. 225
 the substance is given to the

Trial should be by jury.]

—although it is a matter of discretion the trial of a person
 for an offence under s. 124 I. P. C. should generally be by a special
 Jury as the offence is punishable with the highest punishment.
 1928 Bom. 74 : 30 Bom. L. R. 313 : 108 I. C. 509 : 29 Cr. L. J. 411.

Punishment.

—property of the accused cannot be confiscated under s. 124-A
 34 C. 986.

S. 141. (Unlawful assembly).

—the essence of the offence is the common object of the
 members of the assembly. They may have it in their minds when
 coming together or it may occur to them afterwards. 84 P. R. 1868.

—committing an offence and abetment thereof can both be
 the common object of an unlawful assembly. Where in defiance of an
 order under s. 144 Cr. P. C. certain persons enter a certain land,
 some may be guilty of an offence under s. 188 I. P. C. while others
 of abetment of that offence but the common object of all
 was one and the same. 85 I. C. 818 : 1925 Cal. 903 : 26 Cr. L. J. 594.

—the members have a community of object only up to certain
 limit beyond which they may differ, 22 C. 306, and the common object
 must be one of the five objects mentioned in the section ; so an
 assembly for the purpose of gambling does not constitute an
 unlawful assembly, 1 Weir 66 and it must consist of five or more
 persons. So, out of five persons, when it was found that two
 had no common object, the conviction of others could not stand.
 5 M. L. T. 285, 20 W. R. 78, 22 W. R. 17, 34 P. R. 1868, 12 A. W.
 N. 169.

—to apply clause 2 the act resisted must be legal act, so to
 resist an illegal search or the service of an illegal process does not
 make the assembly unlawful. 29 C. 244, 7 N. W. R. 209,
 1 Weir, 64.

—the effect of making an assemblage
 a object with which they
 344, 6 C. W. N. 161.
 persons armed with sticks
 on is to use criminal force
 common intention must be
 1 I. C. 540 : 1925 Mad. 1213

S. 141. (Unlawful assembly)—contd.

large is not unlawful.
 an illegal object as
 by the prosecution. 85
 must be part of the
 should be forthwith
 J. 169: 27 Cr. L. J.

—the assembly becomes unlawful if the object is to subject to humiliation persons who intervene on behalf of the offender. 31 C. L. J. 476.

—the fourth clause draws the distinction between admitted right and disputed right. 16 C. 206, 11 Bom. L. R. 849, but in both cases one who has not the possession of property cannot take it by force and thus take the law in his own hands, 17 C. W. N. 1132, but maintaining a right is no offence. 5 C. W. N. 368, 9 W. R. 66, 24 W. R. 25, 3 C. 572, 14 B. 441, 1 Weir 56 and persons in possession are justified in using force as is necessary to prevent it. 441, 3 P. L. J. 419: 4 P. L. W. 111 1925 Lab. 49, 105 I. C. 657: 1927 Mad. 956: 48 Cr. L. J. 943: 1927 M. W. N. 828, but they cannot go beyond the limit of self-defence as they cannot enforce any right illegally. 20 C. 392, 35 C. 368, 384, 20 All. 459, 14 M. 126, 7 M. H. C. Ap. 35.

—where a soma of five or more persons forcibly enters into possession of the property of certain person and the rest resist the re-entry of the original owner by show of force all of them constitute an unlawful assembly. 1928 Pat. 124: 106 I. C. 691: 6 Pat. 794: 29 Cr. L. J. 99.

—persons assembled with lathis, spears and other deadly weapons are in grave danger of being found to be members of an unlawful assembly provided it can be shown that there was a common object. 109 I. C. 503.

only apply when the over the subject of 15 Lab. 49, it relates only to an initial act in furtherance of a right. 85 I. C. 353: 26 Cr. L. J. 513: 1925 Oudh 425.

—where the common object with which members of an unlawful assembly were charged was that of "harassing Hindus" the charge is not too general but falls within s. 141 (3) I. P. C. 74 I. C. 1044: 24 Cr. L. J. 852: 18 L. W. 350.

—the immediate object of an assembly, as it reached the police station, was to threaten and obstruct the police in the discharge of its duty, held that the object in itself and apart from any and other clauses of sec. 141 I. P. C. was sufficient to bring the case within the purview of 3rd cl. of s. 141, L. R. 4 A. 145.

—who was in actual enjoyment of the property before the occurrence is of paramount importance. 35 C. 103.

S. 141. (Unlawful assembly)—*contd.*

—where an injunction was obtained against the complainant's party, not to interfere with the petitioner in their use and occupation of *pyne* but the complainants constructed a dam across the *pyne* and the accused in attempting to cut the dam were opposed by the complainant's party two of whom were struck by the accused causing grievous hurt, held that the act of the complainant's party was criminal trespass entitling the petitioner to a right of private defence. 17 C. W. N. 1132.

—where two parties were entitled to joint possession of a property but one party having been out of possession, their servants with 30 or 40 other persons went with *lathis* to take forcible possession of the property and succeeded in recovering possession without any force, the servants were rightly punished under this sec. but under the circumstances the sentences should not be too severe. 11 C. W. N. 176.

—where the accused who were found to be in possession of the disputed land, went upon it in large body armed with *lathis*, prepared in anticipation of a fight and were reaping the paddy grown by them when the complainant's party came up and attempted to cut the same whereupon a fight ensued and one man was seriously wounded and died subsequently, held that on the facts established, the common object was not to enforce a right or supposed right but to maintain undisputed the actual enjoyment of right and the assembly was not, therefore, unlawful under s. 141. Cl. 4, 36 C. 865, but where there was longstanding dispute and the accused went to take forcible possession armed with clubs and kept off the opposite party by brandishing their weapons, they were guilty under the section. 9 C. 639.

—no person can have a right to prevent by force another person dealing with his own land merely because he may have some right of easement or customary right over a portion of that land of which right he was not at the time in actual enjoyment. 9 O. L. J. 291 : 4 U. P. L. R. 74.

—where it was found that a number of persons joined together and pulled down a toddy shop and also cut off a number of toddy trees the accused are guilty of offence under ss. 141 and 146 even if there was no proof of violence or force used. 22 M. L. T. 315 : 17 L. W. 577 : 1923 Mad. 606.

—the opinions and impressions of witnesses except what they actually saw and heard about what the mob was doing or saying are not admissible. 105 I. O. 234 : 28 Cr. L. J. 906.

—where two out of five accused are acquitted, the conviction of the others cannot stand. 1923 Lab. 692.

Cl. 5.

—the mere use of criminal force or show of criminal force by any person to take possession of any property is not sufficient to bring a case within Cl. 5 of section 141 I. P. C. unless some criminal intent is proved. 12 C. W. N. 96.

S. 141. Cl. 5—contd

—where a person is charged with contravening an order of the Superintendent of Police prohibiting the collection of an assembly without a license, overt act must be proved to show resistance under s. 141 I. P. C. Mere word when there is no intention of carrying them into effect will not be sufficient. 3 Pat. L. T. 585 : 68 I. C. 945 : 23 Cr. L. J. 625 F. B., 1 Pet. L. R. 199 2 Pat. 134.

Explanation.

—an assembly which is lawful in its inception may all on a sudden without previous concert turn unlawful, 6 C. W. N. 507, 1 W. R. 19, 18 W. R. 2, but illegal act of some member without the acquiescence of others do not change its character. 9 W. R. 19.

S. 142. (Being member of unlawful assembly).

—one may join a mob from motives perfectly innocent but if the mob becomes an unlawful assembly and he continues in it,

“ 66.
“ of an
“ rful by
their repelling an attack made on them, nor by exceeding the lawful use of their right of private defence for which everyone is individually liable. 39 C. 896

—where persons assembled to prevent a procession by force did not disperse being ordered by the police so to do, they were guilty of the offence of being members of unlawful assembly. 14 M. 126.

—the accused cannot be convicted if the common object proved is different from the common object charged. 5 C. W. N. 31, 6 M. L. T. 17, 15 C. 388.

—both parties cannot have same common object, so they cannot be tried together, 12 W. R. 75, but the member of one party may stand as witness against the other. 1 N. W. P. 293, 26 P. R. 1881.

—the charge should state the common object, 26 C. 630, 4 W. R. Cr. 9, omission of which is mere irregularity which does not vitiate the conviction. 39 C. 781.

“ son who went to the place
“ assembly were gathered, to
“ on property which he had a

“ or continues in an unlawful
“ he was merely a harmless
“ d not get out of the crowd
and was there owing to no fault of his own. 1928 Pet. 115 : 6 Pat. 828 : 106 I. C. 591 : 29 Cr. L. J. 79.

S. 143. (Punishment).

—to convict under s. 143 it must be shown that the accused were actuated by a common object and the acts were of such a nature as to make them guilty under s. 141 I. P. C. 9 W. R. Cr. 19.

S. 143. (punishment)—*contd.*

—before any one is convicted under this sec. it must be determined that there was an unlawful assembly within the meaning of sec. 141 I. P. C. 11 C. L. J. 410.

—the specific unlawful object of the person composing the assembly must be shown. 23 W. R. Cr. 78.

—whatever might be the legal claim of the accused in respect of the land on which the paddy was sown, as they had never claimed it as their own, they cannot be said to act in good faith believing it to be theirs. 109 I. C. 229 : 29 Cr. L. J. 501 : 10 A. I. Cr. R. 209.

—where persons of influence being aware of the object of the assembly, they cannot be said to have acted under bona fide claim of right. 109 I. C. 229 : 29 Cr. L. J. 501 : 10 A. I. Cr. R. 209.

—where persons of influence being aware of the object of the assembly, they cannot be said to have acted under bona fide claim of right. 109 I. C. 229 : 29 Cr. L. J. 501 : 10 A. I. Cr. R. 209.

—where mobs start from different localities and spread independently and do not come within 30 or 45 paces of each other they cannot be considered to be members of one assembly. 100 I. C. 817 : 28 Cr. L. J. 337 : 1927 Oudh. 151.

—where the roadcases returns filed by the complainant show that the accused were in possession of a larger plot of land of which they claimed the land in dispute to be a part, presumption was in favour of the accused. 5 C. W. N. 368.

—persons who resisted the execution of a warrant illegally issued are not guilty under s. 143 I. P. C., 24 C. 320 : 1 C. W. N. 151.

—the essence of an offence under s. 143 I. P. C. is the combination of several persons, united in the purpose of committing a criminal offence which these persons agree and intend to commit. 46 N. 257 : 71 I. C. 242 : 24 Cr. L. J. 114.

—when some persons assembled together to see what was going on in a place where a police Inspector attempted to re-arrest a certain accused without intending to prevent the arrest and without any show of force, they could not be convicted under s. 143. 23 All. L. J. 32 : 86 I. C. 350 : 26 Cr. L. J. 766 : 1925 All. 308.

—if the accused had a bona fide belief that he had a right to the tree the mere fact of his going to the scene of occurrence with more than five persons and armed with lethals will not constitute an offence under this section. 34 C. 476 : 31 C. W. N. 527 : 1927 Cal. 520 : 101 I. C. 404.

—where the Magistrate has taken P. C. no complaint under s. 195
—Hom. L. R. 1151 : 1929

S. 144. (Joining unlawful assembly armed with deadly weapons).

—common object of the assembly constituting it an unlawful assembly must be proved. 24 M. 124.

—when a person instigates another to join an unlawful assembly armed with deadly weapons and afterwards he himself joins that assembly, he is punishable under this section read with sec. 114 even if he had no arm. 5 C. W. N. 250.

—where separate sentences were passed under ss 144, 448 and 427 I. P. C. sentences under ss. 448 and 427 were set aside. 3 W. R. Cr. 54.

—the word "prosecution" in the sec. means "following up." 1930 M. W. N. 377.

S. 145. (Joining or continuing in unlawful assembly knowing it has been commanded to disperse).

—to constitute an offence under s. 145 it is necessary that the prosecution should establish that there was an assemblage of at least five persons, that the object of the meeting was any of the five objects mentioned in s. 141, that the accused showed that object with at least four others of the meeting, that the accused intentionally joined the meeting having knowledge of the meeting, or he continued therein after having had that knowledge, that such command to disperse was in the manner prescribed by law; that accused joined or continued in such unlawful assembly after he had been commanded to disperse and that he did so knowing that it had been commanded to disperse. 3 Lab. L. J. 529; 21 P. L. R. 1922: 64 I. C. 373; 23 Cr. L. J. 5

—the expression "commanded in the manner prescribed by law to disperse" in Bombay does not include a command by a Magistrate. 23 Bom. L. R. 350

{ S. 146. (Rioting).

{ S. 147. (Punishment for rioting).

What constitutes rioting.

Force or violence

—the use of any force, even though it be of the slightest possible character, by any one of an assembly once established as unlawful, constitutes rioting. 34 P. R. 1868, 26 W. R. 6.

—actual use of force is necessary to constitute the offence. 1 A. L. J. 602.

—husband and his friends taking possession of wife by force and violence may be guilty of rioting (1864), W. R. (Gap. no) 12.

—violence extends to force against inanimate objects also. 40 C. 367 (1883) 4 P. R. 1839.

—active participation in actual violence is not necessary, some may encourage by words and others by signs while others may actually cause hurt, and all would be equally guilty of rioting. (1875) Rat. Un. Cr. 99.

S. 147. What constitutes rioting—*contd.*

—the word "violence" in sec. 146 I. P. C. is not restricted to force used against persons only, but extends also to force against inanimate object. 40 C. 367

—where it was found that the accused had gone and beaten on the door of the complainant's house when the latter fled away to save himself from being beaten and shot himself up in a room, held that the accused used violence which was sufficient under s. 146 I. P. C. to make their offence rioting 32 M. L. T. 190: 4 M. L. J. 407: 72 I. C. 356: 24 Cr. L. J. 356.

Unlawful assembly.

—an assembly cannot become unlawful by their repelling an attack made on them by persons who had no right to obstruct them,

In such case each is of such right. 39 C. (1916) M. W. N. 213, R. 278, but if after

some exceeded the right of private defence others continued in the assembly aiding and abetting them, they would all be considered members of an unlawful assembly. 36 C. 296.

—persons of all sects are entitled to conduct religious processions through public street and the mere knowledge that they will be forcibly opposed is not in itself sufficient to constitute the members of the procession an unlawful assembly. 26 Cr. L. J. 1325: 89 I. C. 269, 1925 Oudh. 656.

—persons exercising their lawful right are not members of an unlawful assembly. 39 C. 896: 16 C. W. N. 1053: 4 I. C. 43.

—persons engaged in the exercise of a lawful right, of which they are in enjoyment, cannot be said to be enforcing a right but merely to maintain it. 41 C. 43.

—where there was a spontaneous attack on the Police without any preconcerted object and a prisoner in police custody escaped as
ere convicted under Ss. 147.
under s. 147 could not stand.

who had been charged with
was to rescue a person who
of the rescuing grievous hurt
was an unlawful one. 1 Pat.

—where the friends and partisans of a person who was attacked by others arrived on the scene and attacked the assailants causing them various injuries their conviction under s. 147 was not
the accused was to rescue the
the assailants and those alone
to be punished for the assaults
the members of the assembly.
L. J. 298: 29 Cr. L. J. 593:

S. 147. Unlawful assembly—contd.

—the common object of an unlawful assembly was to assault X. After the assault X ran away and two persons joined the assembly, held that the latter could not be punished under s. 149 as the common object had ceased to exist at the time they joined. 81 I. C. 794; 25 Cr. L. J. 1018.

—where certain persons who were found by the Police in the Railway line but were not committing any criminal acts, resisted their arrests and a fight ensued, they could not be punished under s. 147 as their arrest had no justification. 90 I. C. 712.

—a scuffle in a wrestling match in which some policemen were hustled was held to be an incident of trivial nature though the accused were technically guilty of the offence. 23 A. L. J. 1027.

—where a Police Inspector who arrested one person and a special Police did not arrest another was not acting lawfully. 40 C. 411.

"In prosecution of the common object of such assembly."

—In order to establish the common intention of an unlawful assembly it is not necessary to prove that its members actually met and conspired to commit an offence but it may be inferred from the circumstances of the case; where there is a concerted attack by five or more persons it may be validly and reasonably inferred that they all had a common intention and were therefore members of an unlawful assembly. 100 I. C. 232; 1927 Lah. 193; 28 Cr. L. J. 264.

—the words "common intention" in sec. 34 have not the same meaning as "common object" in ss. 146 and 149. Object of the assembly as a whole may not be the same as the intention which the several persons may have. 1929 Pat. 11; 113 I. C. 676; 30 Cr. L. J. 205.

—the principal and the prominent subject of the charge and not the subject of the charge. 405; 29 Cr. L. J. 390; 108 I. C. 421.

—any previous intention or design, makes only the individuals liable, 24 W. R. 26, 2 N. L. R. 883, 5 N. W. P. 208, but there should not be any common object prior to the commencement of fight. 35 M. 243.

—where certain persons enter on a land in violation of an order under s. 144 Cr. P. C. some may be guilty of an offence under s. 147 if that offence, nevertheless the same and the same. 85 I. C. 818:

—assembly is not illegal it is not by any member, 1 O. W. N. 233.

—resistance to the execution of legal warrant or to a search without search-warrant does not constitute rioting but when right of resistance is exceeded and severe injury.

S. 147. "In prosecution of the common object of such assembly"—*contd.*

called for, is inflicted, the person who inflicts such injury may be convicted of such injury. 29 G. 244, 38 C. 304.

—acts done by some members of an unlawful assembly outside the common object of the assembly and not to the knowledge of others are only chargeable against the actual perpetrators. 37 P. R. 1914.

—a person who is the leader of an unlawful assembly whose common object is to assault passersby commits an offence under s. 147. 24 Bom. L. R. 110 : 66 I. C. 192 : 23 Cr. L. J. 256.

—where a Sub-Inspector who went to make a search of a dacoity without a search-warrant, was beaten by the accused it was held that the search being illegal and common object having failed, conviction under s. 147 could not stand, 38 C. 304, but when the Police Officer acted *bona fide* with defective search-warrant the accused were guilty under this section read with sec. 99 16 P. R. 1913, 9 P. R. 1918.

—forcible removal of an ox and two cows from the possession of Mahomedans by several Hindus to prevent cow-killing did not constitute dacoity but rioting, 15 All. 22, but in subsequent cases it was held to constitute dacoity, 15 All. 299 and theft. 5 N. L. R. 17

—recovering of cattle by means of criminal force when seized for trespass, amounts to rioting. (1864), W. R. (gap no.) 21.

—where the accused though outwardly pretending to try to pacify the mob, in reality excited the mob and took part in their doings, he committed an offence under s. 147 though he personally did no violence. 1922 P. 311.

—where it was established clearly that both the parties were guilty of rioting and neither side had been able to establish any justification for their attack upon the other and the evidence was conflicting and unsatisfactory, held that individual responsibility for the death of certain members of the party could not be fixed on any one. 6 Lab. L.J. 170 : 81 I. C. 631 : 25 Cr. L. J. 983.

—in case of confused rioting the prosecution is only to establish that the accused were voluntarily members of the crowd of rioters who committed the offence. 1929 Nag. 36 : 112 I. C. 51 : 29 Cr. L. J. 963.

Dispute as to possession in land.

—right to possession is no plea to a charge of rioting by making a forcible entry on land cultivated by trespasser in possession. 6 M. 215, 5 P. L. R. 47.

—in a charge of rioting of which the common object is to enforce a right or supposed right to land, it is necessary for the prosecution only to show that the accused was not in actual possession at the time of occurrence. A clear distinction must be drawn between enforcing a right and maintaining undisturbed the actual enjoyment of a right. 85 I. C. 711 : 26 Cr. L. J. 567. (C).

S. 147. Dispute as to possession in land—*contd.*

—temporary actual possession does not justify the action of the accused to commit riot. 35 O. 103.

—an order under s. 144 Cr. L. J. is not evidence of possession. 1925 Pat. 17: 81 I. C. 535; 25 Cr. L. J. 919; 5 Pat. L. T. 656.

—but a party with title taking possession by force cannot have common object to retain possession by force. 43 C. L. J. 245: 1925 Cal. 1235.

—where a party entitled to possession once forcibly takes possession its subsequent retention of possession by force is not with the common object of taking possession by force. 87. I. C. 98: 1925 Cal. 1235; 26 Cr. L. J. 946

—where the common object is to enforce a right or supposed right to land it is necessary for the prosecution only to show that at the time of occurrence the accused was not in actual possession. There is clear distinction between enforcing a right and maintaining undisturbed the actual enjoyment of a right. 85 I. C. 711: 26 Cr. L. J. 567 (C).

—where the accused who were found to be in possession of the land went upon it in a large body armed with lathis in anticipation of a fight and were reaping paddy grown by them when the other party came up and attempted to cut the paddy where-
 .. fight took place and one man of the complainant's party was

—where there is finding that first party never parted with possession of the disputed house and that the second party was not given actual possession of that house, the men of the second party who dismantle the disputed house and plough it up in the absence of the servants of the first party are guilty of an offence under s. 147 I. P. C. 1 Pat. L. R. 243: 24 Cr. L. J. 540. 73 I. C. 158.

—where the accused were in actual possession of the land which was sold at a rent sale, they could be guilty under s. 147 of being members of an unlawful assembly, their object being to enforce their right to the standing crops. 1923 P. 299.

—where in pursuance of a Civil Court decree the Decree Hr. takes symbolical possession under Or. 21 r. 85 O. P. C. the Jt. Dr. thereafter becomes a trespasser and in taking possession of the property and in ousting the Jt. Dr. the Decree Hr. does not commit an offence under s. 147 I. P. C. 3 P. L. T. 335. 66 I. C. 817: 23 Cr. L. J. 321.

—when the accused's party who were co-sharers in a tank went armed with clubs to fish in the tank and were opposed by the complainant's party, who were wounded, held that the accused were guilty of rioting. 26 C. 574, 16 C. 206, 1 P. R. 1870. *Similar case* (1914) 21 P. L. R. 1914: 69 P. W. R. 1914.

—on the expiry of a lease or the ceasing of the tenant's interest in the land the landlord is in possession in the eye of law and provided he does not use *andae force*, he is entitled to go upon

S. 147. Disputa as to possession in land—contd.

the land and if necessary to use force for the purpose of asserting and
 t. L. T. 656 :

there is no

Bonafide exercise of right.

—the complainant built a wall obstructing the public way. Immediately after this, the accused who were members of the public, in the bona fide exercise of their right of way pulled down the wall, they were not guilty of rioting, or of mischief or of criminal trespass. 39 M. 57.

—where the common object of an unlawful assembly was alleged to be to loot the crops on the complainant's land but it was found that there was a bona fide dispute as to the title to the land, there could be no conviction under s. 147 I. P. O. 81 I. C. 45 : 25 Cr. L. J. 557 : 1925 Pat. 156 : 6 Pat. L. T. 310.

Right of private defence.

—when both parties are armed and prepared to fight, it is immaterial who makes the first attack, unless a particular party acts within the legal limit of self-defence. 1 C. L. R. 521, (1885) 4 P. R. 1889, 7 M. H. C. Ap. 35, 1 Weir 53.

—but there can be no private defence when the riot is pre-meditated on both sides. 20 All. 459.

See other cases under the heading "dispute as to the possession in land."

Charge.

—to sustain a conviction of rioting, there must be a clear finding as to the common object of the unlawful assembly and the same should have been specifically stated in the charge so that the accused may have an opportunity of meeting it. 75 I. C. 731 : 25 Cr. L. J. 43 : 1924 Lah. 667.

—where the charge is for an offence with one common object and the conviction is for an offence with another common object the trial is vitiated. 1925 Pat. 152.

—where the common object as stated in the charge is not proved the court of appeal or reference cannot substitute another to sustain that conviction. 38 C. L. J. 379.

—where in the charge the common object was stated to be to assault the accused but it was proved that the common object was to set fire to the accused's house and not to assault him, the accused should not be convicted. 1926 Pat. 405 : 29 Cr. L. J. 390 : 108 I. C. 421.

—if the common object assigned in the charge as framed, to support a case under s. 147 I. P. C., has not been sustained, the H. C. on a reference under s. 307 Cr. P. C. cannot invent another common object in order to support a conviction. 51 C. 271.

S. 147. Charge—confd.

—the mere fact that in a charge of rioting the common object is not stated does not invalidate the conviction if the evidence shows that the common object of the assembly was. If two persons were present and one of them was proved to have been a member of the assembly, then the fact that the other was not a member does not exonerate the accused.

—where the charge is framed so that a conviction under the common object, as stated in the charge is not precisely made out, the question in each case is whether the common object established agrees in essential particulars with that laid in the charge. 36 C. 865.

—If the common object in the charge is not substantially made out the conviction is bad. 36 C. 865, 4 P. L. W. 120.

—where object stated in the charge was to cause obstruction to measurement and demarcation of Khas Mahal land, but it was the actual possession of Government. 30 C. L. J. 19.

—where the common object charged and proved is not prejudicial the conviction is not bad, 14 C. W. N. 422 where it is prejudicial or alters the whole complexion of the case it is bad. 33 C. 295, 1925 Pat. 152, 38 C. L. J. 379.

—where several alternative common objects are stated in the charge the appellate court is to decide whether the conviction is sustainable and which object has been made out. 35 C. 718.

—a charge under ss 147 and 323 I. P. C. cannot be altered without a new charge being framed and 14: 18 L. W. 741.

—a hypothetical state of facts is not a charge. 30 C. L. J. 270 and conviction on a charge of rioting on the object of the unlawful assembly must be stated in the charge. 8 C. L. J. 69: 12 C. L. J. 19, but it does not matter if the charge is not necessary to see whether justice has been caused. 81, 8 C. L. J. 69: 12 C. L. J. 19.

—where the charge does not vitiate the conviction in his defence or failure to frame a charge under s. 147 specified in the charge, the failure amounted to a mere irregularity. 1928 Bom. 286: 30 Bom. L. R. 653: 115 I. C. 398: 30 Cr. L. J. 457, 1930 Mad. 188: 31 Cr. L. J. 347: 1930 Cr. C. 188: 121 I. C. 862: 1930 M. W. N. 80.

Evidence.

—where in a case under this section it appears that the prosecution witnesses are interested and a considerable enmity exists between the factions who are concerned in the affair,

S. 147. Evidence—*contd.*

evidence of the prosecution: witnesses should be very carefully scrutinized. 103 I. C. 413: 1927 Lah. 617: 28 Cr. L. J. 685.

When separate sentence can and when cannot be passed.

—on a charge of rioting with the common object of assaulting public servants, persons shown to have committed a separate offence under s. 353 I. P. C. may be separately sentenced thereunder. 41 C. 836, 39 M. L. T. 409.

—separate sentences may be passed under section 147 and section 323, 2 All. 139, 7 All. 29, 16 C. 725, 40 C. 511, 41 C. L. J. 471, and sec. 147 and sec. 325, 7 All. 414 F. B., 9 All. 645, 41 C. 836, P. R. 4 of 1901 F. B., 39 A. 623: 41 I. C. 308: 18 Cr. L. J. 788 *But see Below.*

—separate sentences under Ss. 147 and 323 I. P. C. are illegal. 16 C. 442 F. B., 40 C. L. J. 483, 51 C. 79: 28 C. W. N. 347, 2 Pat. L. J. 91: 61 I. C. 833, 38 I. C. 756, 18 Cr. L. J. 372, *Contra.* 114 I. C. 331: 30 Cr. L. J. 295.

—separate sentences for offences under ss. 147, 149 and 323 are bad. 1929 Lah. 493.

—separate sentences under ss. 147 and 326 read with s. 149 I. P. C. are illegal. 1929 Pat. 263: 1929 Cr. C. 23: 8 Pat. 274: 10 Pat. L. T. 353.

—separate sentences for the offences of rioting and grievous hurt cannot legally be imposed upon a member of an unlawful assembly where the offence of rioting was not itself complete until the grievous hurt was actually inflicted. 1922 Lah. 405, 101 I. C. 454: 28 Cr. L. J. 838, 92 I. C. 463: 1926 All. 224, 27 Cr. L. J. 237: 24 A. L. J. 178.

—when the accused has been punished under Ss. 325, 452 he cannot be separately sentenced under s. 147., 83 I. C. 499: 1923 Lah. 662: 26 Cr. L. J. 19.

—separate sentences cannot be passed under ss. 147 and 353. 41 C. 836: 18 C. W. N. 918: 23 I. C. 203

—no separate sentence should be passed for rioting and theft, when any of the rioters did not individually commit theft. 3 C. W. N. 761.

—separate sentences cannot be passed under Ss. 147 and 417 I. P. C. 8 C. W. N. 305.

—separate sentences under this sec. and s. 332 I. P. C. were held illegal. P. R. 38 Cr. 1907.

—offences under ss. 147 and 160 I. P. C. being *ejusdem generis* there is no impropriety in convicting the accused charged under s. 147 with offence under s. 160. 99 I. C. 861: 1927 Nag. 163: 28 Cr. L. J. 189.

—as force is a necessary ingredient for completion of the offence under s. 366 separate sentences under ss. 147 and 366 I. P. C. are not justified. 4 Lah. L. J. 322: 1922 Lah. 410, 4 P. R. 1901 Cr. fol

—no separate sentences can be passed under ss. 366 and 147 I. P. C., 4 Lah. L. J. 322: 1922. Lah. 410.

S. 147. When separate sentences can and when cannot be passed.

—separate sentences under ss. 147, 342 and 504 I. P. C. cannot be passed for offences committed in the same transaction. 67 I. C. 729, 23 Cr. L. J. 457.

—in case of the offence being committed in the same transaction separate sentences are wrong. 1923 Lah. 91.

—where the accused has been punished for the specific acts which constituted the object and purpose of the riot, the sentence under s. 147 was cancelled. 1923 Lah. 160: 83 I. C. 499: 26 Cr. L. J. 19.

Where some are convicted.

—where nine accused are charged with rioting and house trespass and five of them are found to have had no common object the conviction of rest for rioting is not suitable. 16 L. W. 526: 1923 M. 94

—the acquittal of some of five or more persons constituting an unlawful assembly does not entail that the others cannot be convicted for the offence. 29 Cr. L. J. 859: 111 I. C. 443: 1929 Lah. 59.

—where out of six accused three went to assault the complainant while the other three went to take away his cattle, on the findings of the M. that there was no common object shared by five persons, the sentence under s. 147 could not be maintained. 26 C. W.

if persons took
of all except
4. L. J. 839:

S. 148. (Rioting armed with deadly weapon).

—this section does not merely provide for a heavier punishment in certain cases but deals with an aggravated form of rioting. 96 I. C. 158: 50 M. L. J. 539: 1926 Mad. 741: 27 Cr. L. J. 894.

—if one member is armed with deadly weapon the other members cannot be charged under this section: only the armed person can be charged under it. 22 C. 276, 4 W. R. 8, 19 A. W. N. 77, *confrn.* 5 C. W. N. 250.

himself be shown to

while the charge was
Cr. L. J. 708: 1923

—it is the duty of the appellate court to go into evidence and to refer to it with reference to the individual case of each of the accused. 4 Pat. L. T. 502: 72 I. C. 519: 24 Cr. L. J. 407.

—but the Madras H. C. has held that a person who is a member of an unlawful assembly is guilty of an offence under this section even where he himself is not armed with a deadly weapon but some other member of the unlawful assembly is an armed. 91 I. C. 158: 50 M. L. J. 559: 1926 Mad. 741: 27 Cr. L. J. 894.

S. 148. (Rioting armed with deadly weapon)—contd.

—stout male bamboos are deadly weapon. 1 Weir 70.

—bamboo sticks two inches in thickness are deadly weapons if they are used on a vulnerable part of the body. 1929 M. W. N. 583.

—a *lathi* is not in itself a deadly weapon unless it is used on the head or on some other vital part of the body. 12 Cr. L. J. 103.

—whether clubs are deadly weapons is a question of fact to be determined by the circumstances of the case. 15 All 19.

—in a case of rioting with deadly weapons, the side found guilty of using them and causing grievous hurt is properly punishable more severely than the other side. 8 W. R. Cr. 3

—where both parties are armed and prepared to fight, it is immaterial who is the first to attack, unless it is shown that that party was acting within the legal limits of the right of private defence. 1 C. L. R. 521.

—if the persons who are on the scene and who are attacked themselves riot and use deadly weapon then in convicting for rioting it does not much matter who the aggressors are. 1929 M. W. N. 583.

—where persons go armed with sticks to defend themselves against trespassers they cannot be held guilty under this section 35 I. C. 823; 17 Cr. L. J. 391; 1916 M. W. N. 213.

—rioting armed with deadly weapons, with alternative common objects. 21 C. 955

—if all the accused are not proved to have been armed with deadly weapons only those who have been proved to have been so armed may be convicted under s. 148 in the absence of charge under s. 149. 1929 M. W. N. 888

S. 149. (Every member of unlawful assembly guilty of offences committed in prosecution of common object):

Distinction between this section and s. 34. I. P. C.

—where one is constructively guilty of murder under sec. 34 I. P. C., it is doubtful if he can be said to have committed the offence within the meaning of s. 149, so as to make other prisoners, by double construction, guilty of murder. 8 O. 739, 751.

—s. 34 speaks of common intention while s. 149 refers to common object. Besides this s. 149 comes into operation only where there is an unlawful assembly of five or more persons as required by s. 141 and in that event it has wider scope than s. 34. 28 C. W. N. 170; 38 C. L. J. 411.

—s. 149 is wide enough to cover the principle of s. 34 I. P. C. 95 I. C. 594; 27 Cr. L. J. 818; 27 Punj. L. R. 347.

Construction of the section.

—the mere fact that the second alternative appears to be

S. 149. Construction of the section contd.

—the word 'or' has not been used in the alternative sense, 20 W. R. 511, it divides the definition into two branches, 61 P. R. 1887. The Second branch imports at best an expectation founded upon facts known to all the members, that an offence of the nature committed would be committed, it is something more than speculation 61 P. R. 1887.

—the word "knew" is advisedly used and cannot be made to bear the sense of "might have known" (1873) 20 W. R. 5, 12, 93 L. C. 1043. 27 Cr. L. J. 547; 1926 Lah. 419.

—the definition of "offence" in s. 149 I. P. C. does not cover offences under the special Acts. 1922 M. W. N. 800; 17 L. W. 21; 72 J. C. 360; 24 Cr. L. J. 360, 20 L. W. 914. 1925 Mad. 239.

Unlawful assembly.

—where it is not proved that five persons took part in the assault the accused cannot be constructively held guilty of murder under s. 302 read with s. 149 as the s. 149 applies where there is an unlawful assembly, 85 L. C. 371; 26 Cr. L. J. 531; 1925 Lah. 532; 6 Lah. L. J. 434.

—a person who has retired from a fight taking no further active part in the affray, has ceased to be a member of the unlawful assembly and cannot be held liable for the subsequent offence, 3 B. L. R. 1, 15 O. C. 183

In prosecution of common object or having its knowledge.

—every member of an unlawful assembly is responsible for an offence committed by another member in prosecution of the common object of such assembly or one which he must have known was reasonably likely to be committed, 6 All. 121, 9 All. 645.

—the members of an unlawful assembly may have a community of object only up to a certain point, beyond which they may differ in their objects and the knowledge pursued by each member of what is likely to be committed will vary and as a consequence of this the effect may be different on different members, 22 C. 306, 8 C. L. J. 561, 6 C. W. N. 98.

—the existence of a common object before the commencement of the fight is not necessary. It is enough if the common object is adopted by all the accused. 35 M. 243.

—no offence executes or tends to execute the common object, unless the commission of that offence is involved in the common object; when this is not the case, the offence may yet fall under the second branch. 61 P. R. 1887, 4 P. R. 1889, 17 P. W. R. 1915.

—persons who have not the common object to commit a particular offence or have not the knowledge that it may likely be committed, are not liable for the offence if committed by others, 20 W. R. 5, 11 B. L. R. 347, 13 C. W. N. 827, 1 W. R. 20, 3 Mad. Jur. 416, 17 Bom. L. R. 906, 8 Bom. Cr. C. 118, 26 P. R. 1914, 24 W. R. 66.

S. 149 *In prosecution of common object or having its knowledge—contd.*

—the object with which persons may set out may be that of causing hurt but when some persons carry on deadly weapon which may cause grievous hurt to any one and the others have knowledge of that, the charge under sec. 149 is legal. 1929 M. W. N. 888.

—If one member exceeds the limit of the right of private defence every other member acting with the common object shares with him the guilt of his act. 2 Pat. 595.

—each member of an unlawful assembly is guilty of murder if that murder was committed in prosecution of the common object of the assembly. 1923 Lah. 441.

—when the accused in the course of the attack speared a woman and her defenders with the result that the woman died of injuries and the others got serious wounds, the accused were guilty under Ss. 147 and 326 I. P. C. inasmuch as the killing of the woman was done not in prosecution of their common object. 83 I. C. 714; 1924 A. 670.

Application of the section.

—if a member of an unlawful assembly is to be found constructively guilty of an offence under s. 149 I. P. C., it must be the same offence on which the principal is guilty and not some other offence. If the rest of the accused are not constructively guilty of the same

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—when the members of an unlawful assembly attack certain others with the result that one man of the latter party dies and the former are prosecuted under s. 149, in awarding sentence a distinction should be made between those who joined in the actual attack and those who did not join in the particular act. 35 O. W. N. 345.

—where in a free fight a member of one party struck a blow at a member of the other party causing death, every member of the party is guilty of the offence if the evidence does not disclose the actual person who inflicted the injuries. 95 I. C. 766; 27 Cr. L. J. 846; 13 O. L. J. 204.

—where both parties are armed and prepared for fight and the private defence unless it was only to repel forcible
) Cr. C. 577, 20 All. 459 fol.

—one who joins an unlawful assembly and encourages the members to commit an assault, is in the same position as those who strike the blows. 7 W. R. 58.

—where two members of an unlawful assembly used spears and pierced a man through the chest and abdomen with the

S. 149. Application of the section—contd.

knowledge that death was likely to ensue, all the members were liable. 4 W. R. 26.

—when all the members parted in heating which caused death, all were held guilty of murder. 24 W. R. 5.

—when the leader of an armed unlawful assembly shot an opponent, all were held guilty of murder. 3 C. L. R. 49, 13 W. R. 33, 4 B. L. R. Ap 47.

—where a man was killed at the command of one member of an unlawful assembly, all were guilty of murder. 12 A. I. J. 420.

—when a number of persons set out armed with pistols to abduct some woman they must know that murder was very likely to be committed to overcome any resistance that might be offered; where murder is actually committed all the members of the gang are equally liable. 86 I. C. 347; 26 Cr. L. J. 763; 1925 Lah. 371; 7 Lab. L. J. 51.

—if five or more persons congregate together for exercising a lawful right and resist opposition when necessary they do not commit any offence provided they do not exceed the limits of the right of private defence of their property or persons and if some one or more amongst them exceed that right, unless they can be identified; the presence of the accused at or near the spot is not sufficient to make them liable for the acts of others who exceeded their rights. 97 I. C. 54; 1927 Pat. 27; 27 Cr. L. J. 1078.

—when the accused are proved to be aggressors entering on the land asserting a supposed title and in order to establish possession by force and a murder is committed in prosecution of the common object by all the rioters, the accused are rightly convicted under s. 302 read with s. 149, I. P. C. 1929 M. W. N. 899.

Trial.**Separate sentences.**

—when each of the accused took an individual part in the assault separate sentences under ss. 323 and 149 were held legal. 40 C. 511; 18 I. C. 402; 14 Cr. L. J. 66.

—where the accused has been acquitted of rioting he cannot be convicted of grievous hurt under sec. 325 by the application of this sec. 27 C. 566.

—separate sentences cannot be passed under ss. 147 and 323 or s. 325 read with s. 149. 2 Pat. L. T. 91; 61 I. C. 833; 22 Cr. L. J. 449.

—but it has been held by the Allahabad H. C. that separate sentences under ss. 147 and 323 read with s. 149 are not illegal. 92 I. C. 463; 1926 All. 225; 27 Cr. L. J. 287, 24 A. L. J. 178; 5 Cr. R. 50.

—where the common intention was to cause grievous hurt or that all the members of the unlawful assembly at least knew that

S. 149. Trial—*contd.*

grievous hurt was likely to be caused the accused can only be convicted under s. 325 read with sec. 149 I. P. C. 1923 Lah. 43.

—sentences under s. 147 and some other section of the Code cannot be passed where the latter of the two sections can be applied by the aid of the provisions of this sec. 51 I. C. 677 : 20 Cr. L. J. 517 :

s. 14

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—a person charged by implication under this section cannot be convicted of substantive offence. 16 C. W. N. 1077.

—where the accused was convicted under Ss. 304, 149 and Ss. 325, 147 and not for injuries caused by the accused individually but for injuries caused by some member of that unlawful assembly, held that in the face of the conviction under Ss. 304, 249 conviction under ss. 325, 149 was not legal as the major offence included the minor. 26 Punj L. R. 648 : 1925 Cal. 539 : 7 Lah. L. J. 368.

Charge.

—the common object should be stated in the charge, 39 C. 781, the accused should know the exact nature of the charge, 11 C. 106, and the defect of the charge is fatal. 17 P. W. R. 1915.

—omission to mention the section in the charge does not prejudice the accused as the section does not define any definite offence but provides that in certain circumstances persons may be convicted of an offence. 1928 Pat. 454 : 110 I. C. 104 : 7 Pat. 484 : 29 Cr. L. J. 648 : 9 Pat. L. T. 738.

Prosecution case must be proved

—where the prosecution story was found false the accused need not prove his plea of private defence 2 Pat. L. R. 217 : 26 Cr. L. J. 647 : 85 I. C. 935 : 1925 Pat. 175.

S. 150. (Hiring or conniving at hiring of person to join unlawful assembly.)

—finding of the Magistrate that "what the accused has been doing in collecting and harbouring men for the purpose of committing a riot should he find in his interest to do so" was not sufficient to convict the accused under this section without finding of an unlawful assembly. 29 C. 214, 6 C. W. N. 143.

—where a person was charged under s. 150 read along with s. 302 culpable homicide, the charge was defective as it did not state that the person was charged under s. 302 culpable homicide under s. 150.

33

S. 151. (Knowingly joining or continuing in assembly of five or more after it has been commanded to disperse.)

—where the object of the assembly was to draw a crowd of fifty or sixty persons likely to constitute, as such, an unlawful assembly, the offence was not made out.

7 B 42.

S. 151, Knowingly joining or continuing in assembly of five or more after it has been commanded to disperse—contd.

1887. 3 Lau. L. J. 529; 64 L. C. 373, 23 C. L. J. 5.

S. 152. (Assaulting or obstructing public servant when suppressing riot, etc.)

—when charge against the accused as framed was to the effect that they assaulted and obstructed police force in the discharge of their duties etc., conviction could not be upheld as this section contemplated an assault or obstruction to some particular public servants. 19 C 105.

S. 153. (Wantonly giving provocation with intent to cause riot.)

—"malignantly" implies a sort of general malice. 18 B. 758, 775, 29 All. 569.

—where a poem was found to be objectionably instigating one class of Hindus against a class of Muhammedans and the writer of the poem was convicted under s. 117 and this section, it was held that the meaning of the passage complained of should be gathered from the whole poem and it would not be a proper construction of the word to allow them to override the whole contents of the work. 18 B. 758.

—when the natural and probable effect of a pamphlet was to
 as the followers of the Hind. D. ... a community,
 have intended
 therefore guilty
 175.

—"wantonly" means recklessly. 29 A. 569.

—where certain persons disobeyed the orders of the police concerning the manner in which a religious procession was to be conducted and consequently a riot became imminent which was averted by armed police, they acted wantonly within the meaning of this sec. 29 A. 569.

—the sec. requires that the accused should do something illegal by doing which he maliciously or wantonly gives provocation to any person intending or knowing it to be likely that a riot would be the result. 6 A. W. N. 23.

—the act of killing a cow not having been done in the presence of any Hindu whose feelings would be wounded it would not amount to "giving provocation" if on subsequent bearing of the act the religious feeling of certain Hindus was hurt. 17 A. L. J. 200; 1 U. P. L. R. 85.

the charging of ... A.

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 with ...

S. 153 A. (Promoting enmity between classes.)

—no subject of the Crown is entitled to write anything exciting the feeling of one class of His Majesty's subject against another class. 10 Bom. L. R. 848.

—the court must be satisfied that the accused had a conscious intention of promoting, causing or exciting enmity or hatred between existing classes. 30 C. W. N. 953; 30 C. L. J. 1154; 1927 Cal. 215; 28 Cr. L. J. 205; 99 I. C. 94. R. No. 18 of 1907. 1926 Lsh. 195.
 one class against the others. 30 C. 314.

—this section does not mean that any person who publishes words tending to promote class hatred is guilty under this section. The words "promotes or attempts to promote feelings of enmity" —successful or unsuccessful attempt. It must be the intention of the otherwise the circumstance that there may be a tendency is not sufficient. 104 I. C. 234; 23 Cr. L. J. 794; 1927 Lsh. 594; 28 Punj. L. R. 497.

—in the absence of proof of malicious intention honesty of purpose may be safely inferred. 31 C. W. N. 168; 45 C. L. J. 432; 1927 Cal. 215; 28 Cr. L. J. 205; 99 I. C. 94.

—any person who publishes words that have a tendency to promote class hatred cannot be convicted under this section but it must be shown that the publisher had an intention to promote feelings of enmity between the classes. The internal evidence will be decisive in deciding the question whether external evidence is not excluded; do not apply. 30 C. W. N. 953. C. 733; 27 Cr. L. J. 1154; 34

—if the words indubitably the tendency to incite one community against another then the intention to do it may be inferred. 1929 Cal. 309, 47 C. 109 fol.

—where a newspaper article can bear a meaning only that it is calculated to produce hatred and enmity between two classes, the natural inference is that the publisher had the malicious intention that it should produce such hatred and enmity. The burden shifts to the accused to prove that the natural inference does not hold good in the case. 1930 Bom. 177; 32 Bom. L. R. 585; 1930 Cr. C. 609.

—where an article was printed in a periodical exclusively subscribed by Hindus and it caused excitement amongst Muhammedans it was immaterial how the article came to the notice of the Muhammedans and the publisher of the article was guilty under ss 153 A and 295 A. 1930 Cr. C. 398; 1930 Lsh. 350, 1927 All. 649; 1927 Lsh. 594, Rel. on., 1927 Lsh. 570, Dist.

—where a drama was written by a Hindu at a time of great public excitement and it was found that the writer might, without any malicious intention and in honest thought, express himself in the manner he did with a view to remove the causes of class hatred, held that reading the drama as a whole there was much

S. 153A. (Promoting animity between classes)—contd.

in it which at any rate entitled the writer to benefit of doubt. 40 C. L. J. 151 : 1927 Cal. 747 : 105 I. C. 225, 28 Cr. L. J. 897.

—in a country where there is religious freedom a certain latitude must be given in respect of the free expression of religious opinions together with certain liberty to criticise the religious beliefs of others, but liberty to criticise cannot reasonably include a license to resort to vile and abusive language. 1927 All. 649 Sp. B.

—the intention of the writer of a book should be primarily judged by the language of the book and from the circumstances in which the book was published; the truth of the language is not material. 1927 All. 649 Sp. B.

—a Hindu ridiculing the Prophet Mehamad in his books is guilty under this section. 50 A. 157 : 104 I. C. 225 : 28 Cr. L. J. 785 : 1927 All. 654, 25 A. L. J. 846.

—a malicious satire on the personal life of a religious teacher does not come within this sec. 103 I. C. 769 : 1927 Lab. 590 : 28 Cr. L. J. 721 : 28 Punj. L. R. 514.

—from the conjunction of the words "attempt to promote" with "promote" it was intended by the framer of the section that intention be the element of the offence and the word "classes" includes races also, viz., Europeans and Indians. 10 P. R. 1907.

—an attack upon a school of opinion does not necessarily involve an imputation upon the class who hold or give effect to that opinion. 21 Bom. L. R. 867.

—the explanation to the section requires honesty and absence of malicious intention. 10 P. R. 1907.

—where the writer of an article inveighed hotly against the Babus and Meahs, as professing brotherhood with the poor Muhammedan ryots and then robbing them and referred to the alleged conduct of Christian Missionaries towards their converts, by way of illustration, without any deliberate attempt to excite one class against another, the conviction under this section was set aside as bad in law. 38 C. 214.

—the word "classes" in this sec. does not mean races but religious denomination. 100 I. C. 769 : 1927 Lab. 590 : 28 Pun. L. R. 514 : 28 Cr. L. J. 721 : 9 Lab. L. J. 379.

—it is the duty of an editor of a newspaper to publish matters which it is to the public interest should be known and he will be protected so long as he acts honestly. 31 C. W. N. 168 : 45 C. L. J. 433 : 1927 Cal. 215 : 99 I. C. 941 : 28 Cr. L. J. 205.

S. 154. (Owner or occupier of land on which an unlawful assembly is held.)

—the criminal liability of a person for the acts and omission of the agent depends upon the question by whom the agent or manager was appointed. So where pardanashin ladies and their adopted son had the management of the estate and appointed the agent, they were liable under this section. 39 C. 834 : 16 C. N. 768.

S. 154. (Owner or occupier of land on which an unlawful assembly is held)—*contd.*

—knowledge on the part of the owner or occupier of the land, of the acts or intentions of the agent is not essential element of an offence under this section and he may be convicted under it though he may be in entire ignorance of the acts of his agents or manager. 39 C. L. J. 136, 5 C. W. N. 771; 23 C. 504, 12 All. 550 1 A. L. J. 145 (Note), 8 O. C. 418

—a non-resident co-sharer taking no active part in the management of the estate may be convicted under this sec. like

not to be convicted under

—unless the riot was pre-meditated the owner or occupier cannot be liable 18 W. R. 75.

—prosecution should be started without delay to serve a wholesale warning not only to persons concerned but to others also. 7 C. W. N. 245, 801.

—to convict the owner or occupier it must be proved that he or his agent or manager omitted to use all lawful means in his power to prevent such riot, or to suppress it if it had taken place. 4 O. W. N. 691.

—record of another case is not admissible in evidence. 6 B. L. R. Ap. 83; 15 W. R. 6.

—it is a question for the Crown to determine whether a should be discontinued in
rise to the prosecution

s. 151 and 155 in respect
It was found that the riot took place not in respect of the *khalyan* itself but with respect to the right to collect rents from the tenants, held, that the accused had been rightly convicted. 2 Pat. L. J. 83.

S. 155. (Liability of person for whose benefit riot is committed.)

—there can be no conviction unless it is shown that the accused had property in the land. 17 C. W. N. 1247.

—a zemindar ought not to be liable under this section for a sudden and unpremeditated riot which could not be anticipated. 3 W. R. 34

—a non-resident co-sharer not taking active part in the management in the zamindari ought not to be convicted under this sec. 8 C. W. N. 908.

S. 156. (Liability of agent or owner or occupier for whose benefit riot is committed.)

—in order to convict the manager of an indigo factory under s. 156 I. P. C. it must be shown by legal evidence (1) that a riot was committed (2) that the riot if committed was committed for the benefit of the accused and (3) that the accused had reason to believe that a riot was likely to be committed. 10 C. 338.

S. 157 (Harbouring persons hired for an unlawful assembly.)

—this section as compared with s. 150 is of wider application and contemplates the imminence of an unlawful assembly and proof of facts which in law would go to constitute an unlawful assembly 29 C. 314: 6 C. W. N. 143.

—to convict under this section it must be proved that the persons were hired or about to be hired for the purposes specified therein. It is not sufficient to show that some of the accused's servants have been taken from a district where men bear a well known character as *lathial*, men expert in using sticks and have been in his service sometimes before the riot. 7 C. L. J. 289.

S. 159. (Affray).

—where one person attacks and the other defends it is legally correct to say that they are fighting and it comes under the definition of "affray", the gist of the offence consisting in the terror it causes to the public 1931 Cr. C. 8.

—a *chabutra* which was neither a place to which the public had a right of access, nor a place to which the public were ever permitted to have access was not, though it adjoined a public road a "public place" within sec. 159. 17 A. 166.

S. 160 (Punishment for committing affray).

—no quarrelsome or threatening words whatsoever will amount to affray. 1 Weir 71

—public place is a place where the public go, no matter whether it is private property or not and whether they have the right to go there or not, 31 C. 42, 39 M. 886, 40 M. 556, 13 N. L. R. 68.

—an unfenced compound, 31 C. 542, harboured premises, 39 M. 886, a place forming part of the compound of Hindu temple, 40 M. 556, a goods-yard of a Railway Station, 4 Bom. L. R. 290, 26 B. 209, have been held to be public places.

—a railway station and platform at a time when no train was due except a goods-train, 3 A. W. N. 197, a private garden (1885). S. J. L. B. 333, private *chabutra* adjoining a public thoroughfare have been held to be not public places.

—where a quarrel arose between four persons at the entrance of a temple collecting fees and three other persons who wished to enter the temple without payment of fee, it was an affray. 1 Weir 71.

—where two persons met and after abuse came to blows and each struck the other down while others had also joined the fight and one of them died, but there was no evidence as to who the assailant was, it was held to be affray only. (1912) P. W. R. No. 32 of 1912.

—in an affray specific evidence as to the acts of each fight cannot be given and general evidence of the accused taking part in the fight is sufficient. 21 C. 392 and that such fight was in a public place disturbing the public peace. 1 Weir 71.

S. 160. (Punishment for committing affray)—*contd.*

—a sentence to pay a fine of Rs. 25 each, or in default to be rigorously imprisoned for 30 days, the full term of imprisonment under this sec. was held to be legal having regard to the provisions of sec. 309 Cr. P. C., 1 Mad. 177 F. B.

—omission to sign the judgment by which the accused was charged under s. 160 I. P. C. amounted to a mere irregularity and did not affect the merits of the case, 47 A. 284 : 1925 All. 299 : 26 Cr. L. J. 688 : 86 I. C. 64.

S. 161. (Public servant taking gratification other than legal remuneration.)

—to apply this section it is not necessary that the illegal gratification should have actually been produced, it is sufficient if a firm offer to pay the amount. The section is not confined to cases in which illegal gratification is taken for doing an official act but it applies also to cases where public servants accept such gratification as a motive or reward for rendering or attempting to render any service to any one with any public servant as such, 39 M. L. T. 615 : 54 M. L. J. 723 : 105 I. C. 829 : 1927 Mad. 1011.

—a mere asking is sufficient to constitute an attempt. 2 All. 253.

—when it is clearly established that illegal gratification was obtained it is not necessary to show how it was demanded or obtained. 15 A. L. J. R. 127.

—"any other person" means any person whether a public servant or not. 9 Bom. L. R. 331, 31 B. 325

—a person who *de facto* though wrongly, discharges the duties of an office through which he figures as a public servant, may be tried for getting bribe. 16 W. R. 27.

—in a charge under s. 161 it must be shown that the accused took the bribe as a motive for doing an official act. 47 M. L. J. 662 : 1924 M. W. N. 894 : 1924 Mad. 851 : 84 I. C. 940 : 26 Cr. L. J. 396.

—if a public servant erroneously represents that a particular act is within his official duty and obtained gratification by such inducement he would be guilty even if the act is not in fact within the exercise of his duty. 1928 All. 752 : 51 A. 467 : 113 I. C. 179 : 30 Cr. L. J. 67 : 27 A. L. J. 153.

—a Police Inspector helping a candidate for election to the Legislative Council on receipt of money does not amount to an offence under this section as it is not an official act. 7 Pat. L. T. 608 : 27 Cr. L. J. 1090 : 1926 Pat. 499.

—it cannot be pleaded that the benefit bargained was to go to somebody else. 21 B. 517.

—Head clerk taking bribe to influence a principal *Sadar Ameen* in his decision was held sufficient to convict him whether he did actually influence him or not. 3 W. R. 10.

—a convict warden in a jail is a public servant within s. 21 (7) I. P. C. Where such person in consideration of a payment of a rupee smuggled certain prohibited newspapers he was guilty of an

S. 161. (Public servant taking gratification other than legal remuneration)—*contd.*

offence. 83 I. C. 332 : 1924 Bom. 385 25 Cr. L. J. 1382 : 28 Bom. L. R. 267.

—where a constable and others released some gamblers on payment of a sum of money by the latter the constable was convicted for taking bribe and others for abetment. 5 W. R. 49.

—a *putwari* who took grain as a consideration for showing favour to the giver in discharge of his functions as *putwari* was held guilty of offence under this section. 2 N. W. P. 148.

—the bribe should be obtained "as a motive or reward," 21 C. W. N. 552, which phrase means, on the understanding that the bribe is given in consideration of some official act or conduct which may be inferred from circumstances. 9 Bom. L. R. 331 : 31 B. 335, 24 Bom. L. R. 534 : 67 I. C. 818 : 23 Cr. L. J. 466.

—a bribe is nevertheless a bribe though its payment is postponed 14 C. W. N. 101.

—in order to convict under s. 161 the illegal gratification must be proved to have been received with one of intents mentioned in the sec. 89 I. C. 455 : 26 Cr. L. J. 1367.

—the cheukidars found a widow at the shop of a certain goldsmith at night, and goldsmith gave them a reward to hold their tongues and to prevent them from being disgraced, it was held that they were not guilty of any offence. 3 A. W. N. 179.

—when a bribe has been given it is immaterial to inquire what, if any, effect the bribe had on the mind of receiver. 14 C. W. N. 101.

—the mere presence of a person on the occasion of giving bribe and his omission to promptly inform the authorities do not constitute him an accomplice unless he was concerned in the payment. 27 C. 144, 33 C. 649, 14 B. 115, 15 P. W. R. 1919.

—no criminal intention is necessary to be proved. 22, M. L. T. 373.

—the party offering bribe, it is immaterial that the matter will go present. 27 Bom. L. R. 261.

—the offence is complete by the offer of abetment or by the use of instigation. s. 161, besides by 534 : 67 I. C. 818 :

—the offer to be made there is no reason criminal law. 24 923 Bom. 44.

—offering bribe to an Inspector in the Finger Print Bureau, in order to make him give favourable evidence in court, is an offence under s. 161 I. P. C., 69 I. C. 445 : 23 Cr. L. J. 717.

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—no criminal intention is necessary to be proved. 22 M. L. T. 373.

—favour need not be shown to the party offering bribe, it is sufficient if the briber is led to believe that the matter will go against him if he does not give to officer a present. 27 Bom. L. R. 120 : 86 I. C. 72 : 26 Cr. L. J. 696 : 1925 Bom. 261.

—Illustration (c) to sec. 116 is only an example of abetment
 " are many other ways of instiga-
 " offences under s. 161, besides by
 " 24 Bom. L. R. 534 : 67 I. C. 818 :

—the distinction between invitation and an offer to be made is well recognised in the law of contracts and there is no reason why the same distinction should not apply to criminal law. 2 Bom. L. R. 534 : 67 I. C. 818 : 23 Cr. L. J. 466 : 1923 Bom. 44.

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S. 161. (Public servant taking gratification other than legal remuneration)—contd.

—when a bribe has been proved to have been given it is not necessary to ask what, if any, effect the bribe had on the mind of the receiver and it is an offence even when the act, done for the bribe given, is a just and proper one. The gist of the offence is a public servant taking gratification other than legal remuneration in respect of an official act. 1925 Nag. 313.

Abetment.

—the person who offers the bribe is guilty of abetment. 14 B. 115, 18 P. R. 1918, 1. U. B. R. (1892-1896) 158, 5 W. R. 48, 9 P. R. 1898, if the public servant allows the delivery of the illegal gratification. If the public servant is a party to the transaction, it will be no plea. The public servant was known to be a corrupt official. 1911 M. W. N. 831: 17 M. L. T. 373.

.. .. . to instigate the Bench clerk to instigate the M. der s. 161 read L. J. 370

Attempt.

—to ask for a bribe is an attempt to obtain it which may be effectually done in implicit as in explicit terms. 2 All. 253.

—demand of money by a Court-peon for serving of summonses on witnesses without identifiers amounts to an attempt to obtain an illegal gratification. 32 C. 292.

—a mere offer to pay an illegal gratification to a public servant is an attempt to bribe and money or other consideration need not be proved to have been actually produced at the time. 3 Pat. 647: 83 I. C. 679: 1925 Pat. 48: 26 Cr. L. J. 119: 3 Pat. L. R. C. 61.

—offence was committed as soon as an offer of currency notes was made to an officer as present for obtaining an employment in his department. 88 I. C. 857: 1925 Lah. 101: 26 Cr. L. J. 1241.

Trial.

—there must be very strong evidence to establish a charge of bribe against a public servant. 26 P. W. R. 1911 but the evidence of the accomplice if corroborated is sufficient to establish the charge. 33 O. 649, 14 R. 31, 26 B. 193: 3 B. L. R. 694, 3 P. W. R. 1919, but the testimony of the bribe-giver must be corroborated in material particulars. 63 P. L. R. 1818.

—no sanction is necessary when a judge does not act in the capacity of a judge. 32 M. 255. A police patrol, 4 B. 357 and a Municipal Corporator 3 O. 750, can be prosecuted without sanction.

—where illegal gratification is taken on different dates for the same purpose it becomes a continuous offence and there cannot

S. 161. Trial—contd.

be separate conviction for offences under Ss. 161 and 165. 5 C W. N. 332.

—the charge should state the nature of the offences, 5 W. R. 8, and the name of the giver of bribe. 3 W. R. 69.

—when the bribe is collected by subscription from different persons the accused must be charged in respect of not more than three separate items constituting the total collection. 24 A. W. N. 223, 25 M. 61, 3 Bom. L. R. 540 P. C. *Contra*, charge of having received that lump sum is legal. 32 P. W. R. 1911.

—an order of refunding the bribe is quite inadequate. 16 W. R. 74

—punishment in the case of offences by or relating to public servants and especially the offence of accepting a bribe or to the public servants ought check repetition of the offence also by others. A lenient punishment act as a corrective or deterrent. 86 L. O. 469; 26 Cr. L. J. 821.

S. 162 (Taking gratification in order, by corrupt or illegal means, to influence public servant.)

—a person who accepts for himself or for some other person, a gratification for inducing, by corrupt or illegal means, a public servant to forbear to do an official act, is to be punished under this sec. 3 W. R. 19, 63 P. L. R. 1918; 18 P. W. R. 1918.

—name of the person from whom the gratification was obtained must be proved. 3 W. R. 69.

S. 165 (Public servants obtaining valuable thing.)

... since of securing

... ing-bukish from
... 8 W. R. Cr. 32.

—police-officer taking *dasturi* is punishable under this sec. 1 A. 530.

—separate sentences under Ss. 161 and 165 for receiving gratification partly on one day and partly on another is illegal. 5 C. W. N. 332.

S. 166. (Public servant disobeying law with intent to cause injury to any person.)

—there must be wilful disobedience of an express direction of law and a disobedience to an order is not sufficient even though that order may be given under the provision of law. Cr. Rul. 27 of 1895.

—when the direction of law given by a Special Act is violated the accused will be punished under that Act. 1 Weir 72.

—where person represented a simple notice to be a warrant and arrested the person whose signature was to be required, he was guilty under this section. 20 M. L. J. 568; 7 M. L. J. 429.

S. 173. (Preventing service of summons or other proceedings or preventing publication thereof).

—under the Cr. P. C. tender of summons is sufficient service, refusal to receive summons constitutes no offence, 40 All. 577, M. 199 3 Weir 80, 3 U B R. 202, 5 M. 200 : 1 Weir 79, 31 All. 18, 5 B. H C Cr 31, 3 C 621, 20 C 358 21 O G. 150, 1 Rang 49 : 1 I. C. 65 24 Cr L J. 727, 91 I C 814 : 24 A L J. 216 : 27 Cr. J. 142, 92 I C 460 : 1946 All. 304 : 27 Cr L. J. 284.

—refusal to serve as a special constable is not offence under this section 10 C W N 82 : 2 C. L J 555

—to constitute an offence under this sec. something more than a constable taking a summons to the accused and the accused refusing to take the summons and sign and acknowledge is necessary as under s 69 Cr P. C. mere offer of summons is sufficient service, 23 A. L. J 148 : 86 I. C. 973 : 26 Cr L. J. 909 : 1925 All. 322.

—when a man gets away from a serving officer with the intention of not allowing him to hold any communication with him at all and shuts himself in his house he intentionally prevents service either by tender or by delivery and is liable to be punished under a 173 I P. C 1928 All 118 : 29 Cr L J. 263 : 26 A. L. J 107 : 107 I C 563

S. 174 (Non-attendance in obedience to an order from public servant.)

—time and place of attendance must be mentioned in the summons, 17 W. R. 38, 1 L. L. J. 539 5 All 7, 3 A. W. N. 109, 10 A. W. N. 1, 1 Weir 81, 82, 100, 14 P. R. 1887, a verbal order not specifying the particular day of appearance is not lawful order, 5 M. H C. Ap. 10, disobedience to a verbal order given to a witness by a court to attend on a particular day at a particular place is punishable, Rat. Un. Cr. 75, 5 M. H. C. Ap 15, 7 M. H C. Ap. 3, 1 Weir 87, but the disobedience to a verbal order to a witness to attend at a particular place is not punishable, 1 Weir 86.

accused to attend at
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re. 94 I. C. 889 : 1926
All. 414 : 24 A. L. J. 330, 24 Cr L J. 694.

—the accused cannot be punished unless he was legally bound to attend and refused or intentionally omitted to attend, 10 W. R. 33, 1 B. L. R. 1, 37 P. L. R. 107, 1 Weir 81.

—the order should be directed or addressed to the accused 6 P. R. 1870 and it must be one which could lawfully be issued, 1 Weir 93, 97 and the place to attend must be in British India, 16 M. 463 and there must be a specific order for personal appearance. 7 C. W. N. 797.

—the public servant must be legally competent to issue the summons etc. 2 P. R 1871, 1 Weir 87, 5 A. W. N. 43.

—a Chairman of the Municipality, 5 B. H. C. Cr. 33, a Receiver appointed under the Land Registration Act. 29 C. 236,

S. 174. (Non-attendance in obedience to an order from public servant) —*contd.*

Tahsildar, 24 A. W. N. 122, 4 P. R. 1907, 12 A. L. J. 680, a Mahalkari 8 B. H. C. Cr. 19, a Mamlatdar, Rat. Un. Cr. 70, have no jurisdiction to issue summons for appearance.

—where a Collector issued a notice under sec. 193 of the Land Revenue Act when there was no investigation, suit or other business before him, 14 A. L. J. 1069, and where a Sub-Deputy-Collector issued a notice under sec. 8 of the Chawkidarie Act for attendance, 3 C. W. N. 271, (note) and where the arbitrator in a civil suit were summoned to attend court on a certain date, 2 P. R. 1871, 18 P. R. 1875, the accused were not punished as the processes were not legal

—non-attendance in obedience to a citation issued to a defaulter of land revenue does not render the person guilty under s. 174 as it is rather in the nature of an invitation to appear and not an order to attend, 49 A. 205; 99 I. C. 60; 1927 All. 122; 23 Cr. L. J. 23, 49 A. 215; 1927 All. 49; 99 I. C. 409; 28 Cr. L. J. 153, 1930 All. 265; 1930 Cr. C. 433; 123 I. C. 673; 1930 A. L. J. 354; 31 Cr. L. J. 546 F. B. even where the citation called upon the person to present himself in court on a certain date but it was served only on the previous day while the village was at a distance from the *tahsil*, held that under the circumstances the party was not liable to be convicted under s. 174 I. P. C. 1929 All. 630; 26 A. L. J. 1201; 111 I. C. 670; 29 Cr. L. J. 910 F. B. contra 4 O. W. N. 1211; 1929 Oudh 122; 29 Cr. L. J. 24; 106 I. C. 686.

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—if the witness explains his inability to a process server to attend, he does not intentionally disobey the summons. 21 P. R. 1880.

—where the public servant remains absent on the date of appearance, the accused cannot be convicted though he purposely fails to attend, 20 M. 31, but where the accused attended the court at 10 A. M. at the time mentioned in the summons but finding the Magistrate not present departed without waiting for a reasonable time he was not liable, 1929 Cr. L. J. 1009, but a person departing in absence of a direction 1 Weir 99.

—to convict the accused personal service is necessary. 7 W. R. 58, 6 P. R. 1907, 6 C. W. N. 927, 11 M. 137, 5 B. H. C. Cr. 20, 1 Weir 84, 85, 6 M. H. C. Ap. 29.

—service must be proved by the serving officer. 1 Weir. 85.

—the judgment-debtor escaping from the custody of civil court person is not punishable under this section. 7 M. H. C. Ap. 43, 1 B. H. C. 38, 27 P. R. 1870, 1 P. R. 1871.

—disobedience to a verbal order of a cantonment M. to attend does not constitute an offence under s. 174 I. P. C. in the absence of proof that the order issued by the M. was issued in his capacity as M. or that he was legally empowered to issue such order. 63 I. C. 70; 23 Cr. L. J. 250.

S. 174. Non-attendance in obedience to an order from public servant—*contd.*

—what is made punishable under s. 174 is an intentional disobedience to the summons of a court. The word "intention" means non-attendance which amounts to wilful disobedience. 72 I. C. 593 - 24 Cr. L. J. 433, 1 Rang 549

S. 175 (Omission to produce document to public servant by person legally bound to produce it).

—a Sub registrar is not legally competent to call upon the party to produce the original document for comparison with Register. 15 P. R. 1910.

—a Receiver appointed under the Land Registration Act is not a public servant within the meaning of this section. 29 C. 236.

—the accused must be proved to be in possession of the document, when it is doubtful he cannot be punished. 4 P. L. W. 65.

—the offender may be detained in court till the rising of it. 13 M. 24.

—sanction is necessary to prosecute under this section. 12 C. W. N. 1016 - 8 C. L. J. 20

—but ss. 477 and 478 or 485 Cr. P. C. are not applicable when the accused is charged under this sec. 2 C. L. J. 621.

S. 176. (Omission to give notice or information to public servant by person legally bound to give it).

—there must be intentional breach of the obligation. 16 W. R. 35, 18 W. R. 22, 5 P. R. 1889. when a person fails to do his legal duty he must be presumed to intend to conceal it. 15 A. L. T. 263.

—when the public servant has already received the information from other sources no offence is committed. 4 C. 623, 20 C. 316, 7 M. 436, 5 P. R. 1889 (1893) Rat Uo. Cr. 674.

—a technical omission on the part of a person legally bound to give information to the police is no ground for conviction. 1489.

—bound to give information, *contd.*

—the duty to give information to the police under s. 176 P. C. is cast on the owner of the land and it cannot be cast on the owner of a house. 30 Bom. L. R. 1570, 12 M. 92

—"commission or prevention of offences" refers to offences and not to offences generally. 19 M. L. J. 211

1 N. L. R. 133

—to convict a person under this section for omission of occurrence falling under Cl. (d) of sec. 302 it is not necessary to show that the death actually occurred when the circumstances denote that death was caused by the accused and the body was found there. 11 C. 1

—large need for information. It should be given. 3 W. N. 31.

S. 177. (Furnishing false information).

—this section refers only to such statements as one is legally bound to make and not to every statement. 14 M. 484, 12 W. R. 23.

—a Police-officer making a false report in the statement-diary is liable under this section. 20 All. 151, and also where such officer gives false information of a dacoity to his superior he is guilty under this section. 21 W. R. 30.

—a constable, whose duty was to ascertain on his rounds whether certain notoriously bad characters were in their houses or not, gave a false report that they were, he committed an offence under this section. 15 C. 386.

—where there is no legal obligation to give information no offence is committed. 6 All. 97, 14 M. 484, *dissented from*. 4 M. 144, 13 C. W. N. 191, 6 M. H. C. Ap. 48, 1 Weir 106, 3 B. H. C. Cr. 42, (1885) Rat. Unr. Cr. 210

S. 178. (Refusing oath or affirmation when required by public servant to make it.)

... the
... to
question).

—this section is a continuation of the previous section but provides for the case of a witness who being on oath refuses to answer question relevant to the inquiry 7 C. L. J. 63.

—a person is not under section 161 Cr. P. C. bound to state the truth when examined by the Police officer 23 M. 544, 1 Weir 111, 27 P. R. 1908.

—if a judge asks any question with a view to criminal proceedings being taken against a witness, the witness is not bound to answer them. 10 B 185.

—a complainant cannot be punished for refusing to answer as he is not a witness 13 B 600.

—whether a person who has committed an offence under s. 178 can further be guilty under this sec. for refusing to answer is undecided 7 C. L. J. 63.

—this section has nothing to do with the conduct of accused person in court. 47 M. 396; 77 I. C. 422; 25 Cr. L. J. 574; 1924 M. W. N. 141; 46 M. L. J. 40.

—where in a murder case the court sent for a witness under s. 540 Cr. P. C. who on being asked by the court replied *and* evasively with the result that the court was partially in its attempt to get at the truth, the witness was s. 179 and not under s. 228 I. P. C. 22 A. L. J. 110

—but where the witness refuses to answer have
procc

answered that he did not remember it not
to answer question and he was
read with s. 179 I. P. C., 92 I. C., 4
ah.

S. 180 (Refusing to sign statement.)

—refusal of the accused to sign a statement recorded under s. 364 Cr P C is punishable, 39 A 399, but the refusal of the accused to sign a statement made at his trial in answer to question put by the court is not an offence. 4 B. 15, 3 L B. R 199

—refusal to sign a receipt for a summons is not an offence. 20 C 358

—a witness is not bound to sign his deposition given to Revenue inquiry. 6 M. H. C. Ap 14, 1 Weir 112. nor in the civil court. 8 P. R 1912.

—when a witness is bound to sign his deposition, it is only when the evidence has been read over to him and has been admitted by him to be correct that the offence is committed by the refusal to sign it. 1 A. W N 43

S. 181. (False statement on oath or affirmation to public servant or person authorised to administer an oath or affirmation).

—public servant or other person must be authorised to administer the oath. 6 W R 81, 5 All 17, 5 M. H. C. 326: this section does not apply where the oath is administered beyond jurisdiction, 2 M. H. C. 438 or when the public servant is not competent to take statement on solemn affirmation. 6 M. 252, 12 M. 451.

—making a false statement without knowing whether it is true or false constitutes an offence under this section because the accused does not believe it to be true. 2 W. R. 47.

—this section applies when false statement is made in proceedings other than judicial; when a false statement is made before a public officer in a judicial proceeding s. 193 applies 7 W. R. 68, 8 W. R. 24, 8 B. H. C Cr. 21, 2 M. H. C. 438 *contra*, 4 M. H. C. App. 18, 1 Weir. 115.

S. 182. (False information with intent to cause public servant to use his lawful power to the injury of another person.)**Application of ss. 182 and 211.**

—the Calcutta High Court has held that a prosecution for false charge may be under section 182 or 211, but if the false charge is a serious one the graver s. 211 should be applied and the trial should be full and fair, 32 C. 180, 4 C. L. J. 88, 5 C. 184; offence under sec. 211 includes an offence under sec. 182, 5 C. 184, and a false charge to the police of cognizable offences is punishable under sec. 211 and not s. 182. 5 C. W. N. 727.

—the Madras High Court was of the same view and held that there was no error in a conviction under s. 182 when the false charge made before the Police was punishable under sec. 211 and the High Court could quash a sentence for a minor offence and direct for graver one. 7 M. H. C. Ap. 5: a person making a false charge of theft to the police is liable to be punished under Ss 182

S. 182. Application of ss. 182 & 211—contd.

1 Weir 120, but it has been held that for an offence under sec. 182 it is only necessary that the information given was false to the knowledge of the accused and for an offence under sec. 211 it is necessary that the accused should institute or cause to be instituted some criminal proceedings against another person or should falsely charge him with having committed an offence. 1917 M. W. N. 875. The same H. C. recently held that the essence of an offence under s. 182 is not the falseness of the information as it is under s. 211 but the contempt of the lawful authority of a public servant and the court has no jurisdiction to convict for an offence under s. 182 in the absence of a complaint by the public servant concerned 87 I. C. 418, 1925 Mad. 400; 26 Cr. L. J. 962; 1925 M. W. N. 108.

—the Allahabad High Court has held that although it is difficult to see what case could come under sec. 211 to which s. 182 could not be applied, yet, s. 182 would apply to a case which might not fall under sec. 211. It appears that it has been left to the discretion of the court to determine when and under what circumstances prosecution should be proceeded with under s. 182 and s. 211, 15 A. 336. Formerly it was held that where a specific false charge was made, the proper section for proceedings was sec. 211. 8 A. 383. But in a recent case it has been held that s. 211 is not intended to apply to anything except charges referred in court to a Magistrate and s. 182 is intended to apply where false information is given to the police 34 A. 522.

—the Bombay High Court has held that the criminal law makes a clear distinction between false charge which comes under sec. 211 and false information given to a police which comes under s. 182. Under section 182 the prosecution is to prove that the accused gave the information with the knowledge that it was false in an inquiry under sec. 211. Proof of the absence of the just and lawful ground for making the charge is an important element. 19 B. 717, 9 Bom. L. R. 33. If the information given to the Police amounts to the institution of a criminal proceeding s. 211 is applicable and sec. 182 applies when the information given falls short of amounting to an institution of a criminal proceeding. 15 Bom. L. R. 574; 2 Bom. Cr. C. 86, 7 B. 164, 1 B. H. C. 87.

—the Chief Court of the Punjab is of the same opinion with that of the High Court of Bombay. 16 P. R. 1870 14 P. R. 1682.

—where there have been Court proceedings in consequence of a report to the police s. 211 is the appropriate sec. at any rate where the case is a serious one. But this does not make a prosecution under s. 182 illegal. 11 L. B. R. 43; 64 I. C. 839; 23 Cr. L. J. 55, (7 M. H. C. R. 5, 15 I. C. 992, 34 A. 522, 52 O. 180, 5 C. W. N. 727, 29 I. C. 747) *Ref.*

—where the accused submitted two false reports on the same facts and to the police and the other to the Magistrate, proceeding of the police under s. 182 I. P. C. is not vitiated by the fact that the Magistrate simply dismissed the report without proceeding under s. 211 I. P. C. 1928 All. 342; 26

S. 182. Application of ss. 182 & 211—contd.

A. L. J. 533: 9 A. I. Cr. R. 458: 114 I. C. 189: 30 Cr. L. J. 272, but see 1928 Rang. 254: 6 Rang. 578: 114 I. C. 685: 30 Cr. L. J. 312. 1929 Sind 115: 30 Cr. L. J. 399: 115 I. C. 313: 23 S. L. R. 225: 1929 Cr. C. 105, 117 I. C. 37: 30 Cr. L. J. 710.

—even where an accused does not desire to take action under s. 211 I. P. C. a court of law can complain against a false complaint under s. 182. 1928 All. 333: 9 A. I. Cr. R. 446: 30 Cr. L. J. 2. 112 I. C. 770

—even if a M. is disentitled to take action under s. 182 I. P. C. cognizance by him of an offence under s. 211 I. P. C. is not also passed without any statutory provision but if a charge under s. 211 fails there cannot be a conviction under s. 182 I. P. C. 117 I. C. 37: 30 Cr. L. J. 710

—the criminal proceedings and false charges contemplated by s. 211 I. P. C. mean proceedings instituted and charges made according to the provisions of criminal law in British India. No offence under s. 182 is committed in respect of a false information given to a police officer of a Native State 47 B. 907-25 Bom. L. R. 772.

—under s. 182 the accused must have known or believed the information to be false but under s. 211 it is sufficient if he had reason to believe it to be false. 1925 Sind 184.

Cases under s. 182.

—“gives information” means a voluntary statement and not a statement made in answer to questions put by public servant, 35 P. W. R. 1914, 227 P. L. R. 1914, U. B. R. (P. C.) 13, *contra* It also includes a statement made in the course of investigation by the police 7 Pat. 715: 1929 Pat. 4-113 I. C. 587: 10 Pat. L. T. 244: 30 Cr. L. J. 177, 13 All. 351, 1928 Pat. 56: 9 Pat. L. T. 32: 9 A. I. Cr. R. 54: 104 I. C. 712: 28 Cr. L. J. 872, 90 I. C. 316: 26 Cr. L. J. 1532: 1925 Rang. 364, 10 B. 124, *lat. Un. Cr. 124*, 17 Cr. Rul. 1877.

—if the person to whom the false information is given is not a public servant the offence will be defamation. 1 Cr. Rul. 1887.

—complainant's making a complaint to a Magistrate and then dropping the proceedings is no bar to the police officer, to whom also false information was given, to act under this section, 17 A. L. J. 32.

—when an accused makes false statement by way of defence, 2 N. W. P. 128, or for the purpose of getting a transfer of the case, 33 A. 103, he is not guilty under this section.

—information on the belief is not information under this section. 4 All. 498, (1887) 4 *lat. Un. Cr. 315*, 1 Cr. R. 1887.

—where a person in whose house theft was committed informed the police that he suspected two persons whom he

S. 182. Cases under s. 182—contd.

was held that it did not amount to giving false information. 22 C. W. Lat. Un. Cr. 72, 39 All. 715.
 . person does not make the . J. 236.

—where the accused gave false information to the police that his horse was stolen when in fact he himself had sold it and subsequently instituted proceeding under Ss. 379 and 411, he was guilty of an offence under s. 182. 44 A. 647; 1922 All. 272; 71 I. C. 216; 24 Cr. L. J. 88.

—although the offence under s. 211 I. P. C. must always include that under s. 182 I. P. C. a court can convict under the minor offence even though the major offence had been proved. 6 Pat. L. T. 515; 88 I. C. 1045; 26 Cr. L. J. 1269; 1925 Pat. 717.

—on a prosecution for an offence under s. 182 I. P. C. the mere fact that the information was shown to be false does not throw the burden of proof on the accused that when he gave the information he believed it to be true. It is incumbent on the prosecution to show that the only reasonable inference was that he must have known or believed it to be false. 30 Punj. L. R. 655; 11 Lah. L. J. 495; 119 I. C. 230; 30 Cr. L. J. 1008, 69 I. C. 81; 23 Cr. L. J. 641; 3 C. L. J. 342, 110 I. C. 785; 29 Cr. L. J. 753.

—to convict the accused under this section the information must be proved to be false. 11 Cr. L. J. 1030.
 guilty the

—the accused is guilty notwithstanding the fact that a public servant to whom the false information is given does not put faith in the information and takes no action. 13 All. 351, 15 All. 336.

the information must be information of fact which a public servant is bound to take cognizance of. 16 A. L. J.

—it is necessary to show that the act done will be to the injury or annoyance of third person. 13 Bom. 506, but under Cl. (b) when the information is given to an officer who can exercise power to the direct and immediate prejudice of another the offence is complete. 1897 Rat. Un. Cr. 946.

—when the accused made a false statement to a Magistrate, incriminating a police officer, not by way of complaint but asking for an inquiry only, and the Magistrate examined him on oath

the accused was convicted under s. 182. 11 Cr. L. J. 1030.
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S. 182. Cases under s. 182—contd

personated by another in the examination, is guilty under this section. 13 B. 506

—false statement in a petition of appeal is not an offence under this section as it does not induce the appellate court to do what it ought not to have done. 41 P. R. 1881, 34 P. R. 1879, 17 P. R. 1879, 109 I. C. 805 29 Cr. L. J. 613; 1928 Pat. 574; 10 A. I. Cr. R. 320

—submitting a petition of resignation to a Collector containing an untrue account of an affray and defamatory statement is not an offence under this section. 16 A. L. J. 103.

—not signing the declaration in the income-tax return as to "other sources of income" is no offence under this section. 17 M. L. J. 25 (n)

—an affidavit having been given to the complainant's pleader on his behalf and it being open to the complainant to instruct his pleader not to file the same, there was, under the circumstances of the case, no information given to a public servant within this sec. 83 I. C. 343. 25 Cr. L. J. 383; 1925 Mad. 123; 1925 M. W. N. 146

—distinction between s. 211 and s. 182 discussed. 48 A. 906, 22 A. L. J. 829 82 I. C. 167; 1924 All. 779, 82 I. C. 718; 25 Cr. L. J. 1358, 6 Lah. L. J. 369.

Trial.

—the prosecution must establish that the only reasonable inference was that the accused must have known or believed it to be false. 26 M. 640, 1930 Cr. C. 1094; 1930 Pat. 550, 1925 Pat. 717.

—evidence must be adduced in presence of the accused, a decision in a previous case is not admissible to prove the falsity of the information. 11 W. R. 35.

—till the complaint is finally determined the Magistrate cannot order prosecution for making a false complaint, 4 C. L. J. 88, 3 C. W. N. 758, 5 All. 387, and a prosecution should not be directed without hearing the accused. 46 P. W. R. Cr. 1908, *contra*. 15 All. 336.

—where, on the report of the police that an information was false, the Inspector of Police purporting to act under sec. 195 Cr. P. C. granted sanction for the prosecution under this section and the Magistrate took cognizance of the offence, it was held that without the complaint of the public servant, to whom information was given, the Magistrate was not right in taking cognizance. 14 C. W. N. 761.

—when false information is given against two persons, only one offence is committed. 13 C. 270.

—the court has no jurisdiction to conduct under this sec. in the absence of a complaint by public servant. 1925 M. W. N. 109; 1925 Mad. 400.

S. 183. (Resistance to taking of property by lawful authority of public servant).

—so long as the property is in the possession of the judgment debtor he has no right to offer resistance to attach

thereof by decree holder. 29 Cr. L. J. 538: 109 I. C. 362: 1928 Lah. 844.

—the accused who successfully resisted seizure of goods by an officer of the court in execution of a decree against a deceased debtor, claiming the goods to be his own, is guilty under this section. 21 M. 78.

—refusal to hand over to the bailiff money in the pocket does not amount to resistance (1888) Cr. Rul. 77, Rat. Un. Cr. 412, nor does the mere oral statement claiming property attached by the bailiff amount to resistance, 15 B. 564, but refusal to give up property along with threatening to do harm, amounts to resistance under this section 6 Bom. L. R. 254.

—obstruction to distrikt by village Munsiff outside his jurisdiction under a defective demand-notice, is punishable, 1 Weir 127, but if the distraint be not *bona fide* a conviction under this section will not lie. 1 Weir 126.

—attachment of property without warrant is unlawful. 27 A. 285.

—resistance to a peon in attaching property under a warrant, the term of which has expired, is not punishable under this section, 10 C. 18, 1 Weir. 134, nor the resistance to a sheriff attaching property under a defective warrant is an offence under this sec. or s. 186, 49 P. R. 1905.

—resistance to a village Chaukidar in attaching property without the requisite written authority does not amount to any offence under this section. 25 C. 274, Rat. Un. Cr. 325

—resistance to a bailiff who breaks the doors of a third person, in executing a decree against the Judgment-debtor when it turns out that neither judgment-debtor nor his goods are there, is not an offence under this section or sec. 186, 7 B. H. C. Cr. 83, 7 W. R. 12.

—"lawful authority" does not mean that a man who may have a civil action against the public servant resisted, must be excluded from the operation of this section. 21 M. 78.

S. 184. (Obstructing sale of property offered for sale by authority of public servant).

—obstruction in this section means physical obstruction, 2 Cr. L. J. 44, mere execution of a deed of sale is no obstruction under this section. 3 A. W. N. 197.

—to constitute an offence the sale must be by the authority of public servant. 27 All. 480: 2 A. L. J. 128.

S. 185. (Illegal purchase or bids for property offered for sale by authority of public servant.)

—this section contemplated both corporal and incorporeal property. 3 W. R. 33.

—a person who bids for the lease of a ferry and does not complete the sale is guilty under this section. 3 W. R. 32.

—bidding at an auction of the right to sell drugs under a false name and delaying the purchase when the sale is confirmed is an offence under this section. 37 A. 128: 13 A. L. J. 109.

S. 186. (Obstructing public servant in discharge of public functions.)

—the word "voluntarily" implies some overt act of obstruction and not merely passive conduct. 15 M. 221, 6 Bom. L. R. 254, 25 G. L. J. 721; 81 I. C. 209, 1925 Lab. 139.

—mere abuse is no offence under this section. 1 Weir 621.

—the word "obstruction" means "physical obstruction," that is actual resistance or obstacle put in the way of the public servant. The word does not cover the mere threats or threatening language 1928 Lab. 827; 29 Cr. L. J. 645; 110 I. C. 101.

—when the accused shut the doors and did not admit the Commissioner sent by the District Judge to search his house and take certain property he did not commit any offence under this section. 29 G. W. N. 857.

—where the accused snatched away the movables attached for arrears of revenue and when charged raised objection to the legality of assessment and the attachment but they were all found against, he committed an offence under this sec. 30 Bom. L. R. 1255; 1928 Bom. 497; 114 I. C. 854; 30 Cr. L. J. 353.

—where the accused being arrested in execution of a decree and went inside his house, inside, held that he did not of his duties under this C. 833; 1927 Lab. 708; J. L. R. 196; 9 Lab. 214.

—a process server, 2 B. L. R. 21, 10 W. R. 43 F. B., 22 C. 596, a vaccinator, 1 Weir 129, and a union *Karnama*, 1 Weir 128, are public servants within the meaning of this section but a Receiver appointed under the Land Registration Act, 29 G. 236, a person appointed by the Collector under the B. T. Act for the division of crops, 18 C. 518 and Local board Sirear, 12 G. W. N. 96, are not such public servants.

—obstruction to second distress warrant under the Income tax Act on failure of surety to produce property attached under the 1st warrant constitutes an offence under this sec. 1929 Pat. 503; 1929 Cr. C. 255; 119 I. C. 886; 30 Cr. L. J. 1099.

—when a *panchayat* was reorganised by a Sub-divisional officer and the accused not liking it rudely refused to work as a member and instigated others not to work it did not amount to an obstruction punishable under this sec. 23 A. L. J. 352; 87 I. C. 514; 1925 A. 401; 47 A. 579; 26 Cr. L. J. 978.

—the refusal of a *patwari* to show his account books on the demand of the *Kotungo* is an act of insubordination only and not criminal act. 85 I. C. 821; 1925 All. 409; 26 Cr. L. J. 597.

—separate convictions both under Ss. 186 and 189 are bad. 1925 Pat. 183.

—obstruction to person acting under the orders of public servant constitutes an offence under this sec. 52 B. 286; 30

S. 186. (Obstructing public servant in discharge of public functions)—*contd.*

L. R. 364 : 1928 Bom. 135 : 29 Cr. L. J. 529, 31 Bom. L. R. 800 : 1929 Cr. C. 321 : 1929 Bom. 285.

In the discharge of public functions.

—public functions contemplated by this section mean legal or
ons and not any act of the
C. 896, 10 P. R. 1905, 1925
03 I. C. 593, 1 C. W. N. 74 and
Bom. L. R. 315 : 2 Bom. Cr.

C. 66 *contra*. any obstruction caused to a public servant when he is discharging his function in good faith would come under this section. 19 M. 349, 71 M. 296, 31 M. L. J. 305, 8 A. 293, 12 B. 377, (1870) 7 B. R. C. 50, 2 A. W. N. 52, 233, 13 M. 148.

—the question whether public servant was acting in the discharge of his public function is a question of fact and not a matter of intention of the public servant. His intention may be perfectly honest, nevertheless, if in fact and in law the functions in discharge of which he is obstructed are not public functions no offence can be committed under this sec. 51 B. 896 : 1927 Bom. 483 : 103 I. C. 593 : 28 Cr. L. J. 705 : 29 Bom. L. R. 987.

—*bona fide* but wrong belief of a public servant does not render an obstruction to him an offence. 1925 Lah. 139.

—where some persons rescued the accused from the custody of two peons of a court of justice when the accused called them for help, they were guilty under this section and the accused of abetting the same. 22 C. 759 22 C. 596.

—where the father took away his son when in the custody of a chaskidar who was taking him inside the thana, he was guilty under this sec. as he obstructed the police in the discharge of his duty. 3 A. W. N. 170.

—when the accused who was suspected of possession of cocaine assaulted a constable and a Sub-Inspector of the Abkari Department who proceeded to search him and escaped, he was rightly punished under this section and s. 353. 13 Bom. L. R. 635 : 1 Bom. Cr. C. 55.

—the resistance to a process of a civil court is punishable under this section. 2 B. L. R. 21 : 10 W. R. 43 F. B. overruling 9 W. R. 63, 2 B. L. R. 188.

—to persuade the tenant not to pay rent to the Receiver is not an offence under this section. 29 C. 236.

—obstruction to warrant of arrest not bearing the signature of the M. but only the initial, 23 C. 896, 26 C. 743, obstruction of writ of attachment after the expiry of the date, 1 P. L. T. 654 or which did not bear date, 22 C. 886, obstruction to measurement of an amir, 22 C. 886, obstruction to mistaken warrant, 22 C. obstruction to an erroneous possession in place of symt, 61 : 26 Cr. L. J. 750 : 48 M. L. J. 97, are no offences under this section.

5. 186. In the discharge of public functions—contd

—resistance to a peon under defective warrant is not punishable under this section 37 C 122 14 C W. N 282. But see 21 M. 96, 13 M 148, 19 M 349.

—where the warrant is illegal the obstruction is not punishable. 26 Cr L J 750. 86 I. C. 268: 48 M. L. J. 97.

—when an illegal attachment is made of the cattle of the Pt. Dr in his absence under a writ of attachment not bearing the seal of the court and the cattle remains for some time in the custody of the peon
the peon's
peon's
in law.

—where a process for attachment of the articles situated outside the jurisdiction of a munsiff's court is issued and the process server is resisted, the warrant being irregular, no offence is committed, 39 C. L. J 33: 1924 Cal 501.

—where the accused threatened to beat the constables who entered into his house to find out stolen articles, he was guilty under this sec. 83 I C. 657: 35 M. L. T. 146. 1924 Mad. 760, 26 Cr. L. J. 97.

—refusal to accompany a measuring clerk employed in the Revenue Survey Department to measure his house, 5 B. H. C. Cr. 51, or to forbid a Survey measurer to measure land without using force, Cr. Rul. 27 of 1888: Rat Un. Cr. 277, escaping from lawful custody, 2 B. H. C. 128, prevention of vaccination by spreading false report, 15 M. 93, 1 Weir 129, 130, falsely informing the vaccinator that he would get no children in the village to vaccinate, 1 Weir. 130, posting up a placard asserting a title to property about to be auctioned by a public servant, 7 P. R. 1905: 6 P. L. R 374, objecting to the search of house without using force or threatening language, 2 Bom. L. R. 541, *bonafide* dispute with a Municipal servant over disputed property, Cr. Rul. 13 of 1888, 15 Bom. L. R 315: 2 Bom. Cr. C. 66, chaining the door from within to prevent the execution of warrant of attachment of movable property, 2 B. H. C. 128, refusal to give cart on hire to Govt. Officer, 2 B H. C 165, have been held to be no offence under this section

5. 187. (Omission to assist public servant when bound by law to give assistance).

—first part of the sec. deals with the punishment when a person being bound by law to render assistance, intentionally omits to do that and the second part provides for the punishment when assistance is demanded for specified purpose. 26 M 419 F. B.

—the word "assistance" implies that the party who assists in doing something which in ordinary circumstances, the party assisted can do for himself. 26 M. 419.

—when a person being called upon, by a salt-inspector to assist in a search held under sec. 103 Cr. P. C. refused to do so,

S. 187. (Omission to assist public servant when bound by law to give assistance)—*contd.*

he committed an offence under this sec. 38 M. L. J. 27 : 1920 M. W. N. 110.

—but where one is not legally bound to render assistance no offence is committed. 23 B. 769, 3 A. 201, 7 C. L. R. 575, 6 C. P. L. 5, 42, A. 314.

—where a police officer called upon the accused to assist him in detecting some unknown dacoits hiding in the forests and the accused refused to help him, he was not guilty under this section 42 A 314.

S. 188. Disobedience to order duly promulgated by public servant.)

—this sec. applies where order has been duly promulgated
 punishable 10
 or when it is
 of publication.

—the question whether the order disobeyed is a legal order is an entirely distinct question from whether an offence has been committed in disobeying it. If the order is legal, the court has only to see whether the accused disobeyed it and if so such disobedience caused or tended to cause the effects specified in the second and third paragraphs of the sec. 45 A. 526; 73 J. O. 801; 24 C. L. J. 689.

—if the order is both in substance and in its manner of publication illegal no conviction will stand. 20 A. 501, 14 B. 165,

vered" is different from
 16 Cr. L. J. 599 : 1925

All. 165.

—the order must be directed to the accused. 7 C. L. R. 291, 3 B. L. R. 13, 12 B. L. R. 231, 12 W. R. 49, 15 W. R. 50, but a general order is sufficient, 13 C. 175, *Contra*, Kat. Un. Cr. 1670, 30 Cr. Rul. 59 of 1890, and when the accused knowing such order disobeys it he will be punished. 3 B. L. R. Ap 149, 1 Bom. L. R. 524.

—the order must be in writing and duly promulgated and directed to the accused. 36 P. R. 1905.

—If the public servant is not legally competent to promulgate the order there cannot be any conviction. 5 B. H. C. Cr. 21, 3 B. L. R. 45, 6 C. W. N. 141, 24 A. W. N. 233, 38 M. 602, 7 B. L. T. 25, 1 A. L. J. 615, 3 A. 201, 8 C. L. R. 231, 3 B. H. C. Cr. 53, 23 W. R. 57, 14 M. L. T. 443.

—an order to the priests of a temple to widen and lighten the doorway so as to obviate the danger arising from overcrowding and improve the ventilation, is a valid order, 6 B. H. C. Cr. 36, no

S. 188. (Disobedience to order duly promulgated by public servant)—contd

—sale of arrack in contravention of an order of a District Collector is not an offence under this section in the absence of proof of causing or rendering to cause obstruction, annoyance or injury to anyone 90 I. C. 436: 26 Cr. L. J. 1556: 1925 Mad. 856: 48 M. L. J. 605.

—disobedience to summary order of ejectment by the Dy. Commissioner under s. 219 C. P. T. Act constitutes an offence under s. 181 I. P. C. 17 N. L. R. 88: 64 I. C. 499: 23 Cr. L. J. 19.

—the prosecution for disobedience to an order under s. 144 may be started either by sanction under s. 195 Cr. P. C. or by an order passed under s. 476 Cr. P. C. 3 Pat. L. T. 268: 67 I. C. 205: 23 Cr. C. 381.

—to convict under this section for disobedience of an order under s. 144 C. P. C. the prosecution must prove that the order was the order. 41 C. L. J. Cr. L. J. 4, (22 Cr. L. 12: 1927 Cal. 306: 100

1 Cr. P. C. prohibiting

person from holding a market punishable in the absence of proof to lead to a breach of the peace R. 22, and it was held in 4 O. C. 100 that the possession of a rival hat at a place day might lead to the breach form a sufficient ground for conviction. *Contra*. 10 B. L. R. 434: 18 W. R. 47.

—legality of order under s. 144 Cr. P. C. if can be questioned in a prosecution under s. 188 I. P. C. 67 I. C. 200: 23 Cr. L. J. 376.

—an order under sec. 144 Cr. P. C. prohibiting a person from collecting rents from tenants is an invalid order. 9 C. W. N. 392.

—the accused were ordered not to make any disturbance over a certain person's rights of a ferry, but the accused without causing any disturbance piled another ferry on the same site, held that he was not punishable. 22 O. W. N. 599, *Contra*. 1 A. 527.

—where joint property of an absconder was attached but the other members cultivated it in spite of the order, the latter was not punishable under this section. 2 P. L. W. 179.

—an order preventing the owner from building a wall to his own house because it might result in a breach of the peace, is an illegal order. 10 B. L. R. 441.

—the offence of disobedience of an order duly promulgated by a public servant under certain prescribed conditions is an offence under s. 188 I. P. C., and s. 23 (3) of the Bombay City Police Act enlarged the ambit of the existing offence by including an act prohibited by such a notification. 31 Bom. L. R. 1151: 1929 Bom. 433: 1929 Cr. C. 545: 54 Bom. 35.

S. 188. (Disobedience to order duly promulgated by public servant)—*contd.*

—to constitute an offence under this sec. it must be proved that the disobedience caused or tended to cause obstruction, annoyance or injury to any person lawfully employed. 1928 Mad 591; 1928 M. W. N. 70; 29 Cr. L. J. 590; 10 A. I. Cr. R. 258; 109 I. C. 606, 29 Punj. L. R. 647; 29 Cr. L. J. 877; 111 I. C. 461, the mere finding that the accused who was one of the crowd refused to disperse when ordered to do so does not constitute an offence under s. 188. 29 Punj. L. R. 647; 111 I. C. 461; 29 Cr. L. J. 877.

—where the accused were aware of the proceeding under s. 145 Cr. P. C. and acted in collusion with the second party in order to deprive the first party of the fruits of their success in 145 case, they were bound by the order under s. 145 and were liable to be convicted under s. 188 I. P. C. 33 C. W. N. 1002.

—an order directing the owner of an inn to repair the gate of the inn within a month as it was apprehended that traveller's property would otherwise be stolen was an order the breach of which was not punishable. 6 A. W. N. 251.

—an order forbidding persons to enter a railway station except for bona fide purposes of travelling is an invalid order. 35 A. 136.

—this sec. does not apply to an order made in the civil court. 6 C. 445, 17 Bom. L. R. 676; 3 Bom. Cr. C. 89, 8 Bom. L. R. 639, 14 C. P. L. R. 174, 5 B. H. Q. Cr. 46, 17 M. L. T. 391, 1909 U. B. R. P. C. 23; the remedy for disobedience to an order of injunction of the Civil Court is committal for contempt of court. 8 Bom. L. R. 638.

—complaint in writing under s. 195 Cr. P. C. has not been dispensed with by sec. 11 of the Preventive of Intimidation Ordinance (V. of 1930). 33 Bom. L. R. 59.

—judicial authority cannot question the order passed by the executive authority until so attempt is made to enforce the execution of a penalty for its breach. 6 C. 88.

The following orders have been held to be invalid orders :—

—Order by a Magistrate directing a person to take proper care of them

— session is passing a place

—Order directing a person to remove a fence so as to allow the use of an alleged right of way. 1 Weir 143.

—Order directing the cutting down of trees because they impede ventilation. 12 W. R. 72.

—Order for the removal of the banks of a tank in a dry river as they obstructed the flow of water in rainy season. 10 W. R. 36.

—Order forbidding the slaughter of cattle or the sale of meat within a radius of three miles of a licensed slaughter house. 1896. 1 U. B. R. (1892-1896) 179, but an order not to slaughter cows or bullocks on particular days is a valid order. 18 O. C. 70.

Trial.

—a M. making an order under s. 144 Cr. P. C. cannot himself try for its disobedience. 1897 Rat. Un. Cr. 904; Cr. Rul. 14 of 1897.

—nor a M. can try a case for disobedience of order when there is appeal pending against that order. 2 B. H. C. 384.

—when the order is promulgated by the Govt. and not by any public servant, no sanction is necessary to prosecute. 24 M. 70.

—a M. should not sanction a prosecution under this sec. unless he thinks that all the elements necessary for a sanction are present. 14 C. W. N. 283

—where a person has been proceeded against under s. 291 I. P. C. for flagrant disobedience of an order of the court to discontinue a nuisance and acquitted, before anything can be done against him under s. 183 I. P. C. a complaint is required under s. 195 Cr. P. C., 1930 Lah. 1055: 1930 Cr. C 1231.

S. 189. (Threat of injury to public servant).

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—"Injury" in this section implies an illegal harm. A mere threat to bring a legal complaint is no threat of injury within this sec. 93 I. C 48: 1926 Lah. 139: 27 Punj. L. R. 87: 27 Cr. L. J. 400.

"Injury" means the actual harm, not the threat of harm.

S. 190. (Threat of injury to induce person to refrain from applying for protection to public servant)

—a clergyman who excommunicated a parson who instituted a civil suit for the possession of certain Church property for withholding it, was punishable under this sec. 8 M. 140.

—the threat of the institution of a civil suit for a mere declaration of right against any person cannot be said to be a harm illegally caused in body, mind, reputation or property and thus is not an injury within the meaning of this sec. 92 I. C. 863: 24 A. L. J. 314: 1926 All. 277: 27 Cr. L. J. 351.

S. 191. (Giving false evidence).

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S. 191. (Giving false evidence)—*contd.*

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, 24 C. 755, 14 C 653,
P. R. 1894, 1864 W. R.
53: 1 Bom. Cr. C. 167,

—there cannot be alternative charges in respect of two contradictory statements and it cannot be argued that one of the two statements must be false and it is not necessary to prove which of them is false. 1928 Lab. 125: 29 Punj. L. R. 14: 107 I. C. 100: 9 A. I. Cr R. 505.

—the offence may be committed although the person giving evidence has neither been sworn nor affirmed. 19 C. 355, 14 B. L. R. 294 F. B., 23 W. R. 12, 11 A. 183, 16 M. 105, 140, 16 A. 359. *contra*. 10 A. 207.

—when a person after acquittal was examined on oath to enable the court to take cognizance of an offence under s. 190 (c), Cr. P. C., it was held that he could not be examined on oath as he was not a witness at the time nor he was legally bound to state the truth. 29 C. 455.

—a statement made to an Investigating Police officer under s. 161 Cr. P. C. cannot be made the foundation of prosecution under s. 193 I. P. C., 28 A. W. N. 22.

—the false evidence need not be material to the case in which it is given, 6 W. R. 84, 19 Cr. R. 69, 5 B. H. C. Cr. 68, but the materiality of the subject-matter may be considered in determining the intention of the accused to make false statement. 1 M. H. C. 38, Rat. Un. Cr. 2 (1862).

—the falsity of the statement must be proved beyond doubt. 10 C. W. N. 1099.

—it must be false to the knowledge or belief of the person making it (1882) Rat. Un. 2.

—to sustain an offence of perjury the prosecution must prove (1) that the statement was false, (2) that it was known or believed to be false or not believed to be true. In other words the statement must be intentionally false. 1928 Lab. 125: 29 Punj. L. R. 14: 107 I. C. 100: 29 Cr. L. J. 212.

—statement made without knowing whether it is false or true, is legally a false statement. 2 W. R. 47.

—but rash or credulous statement is not punishable, it must be found that the accused made some statement which he knew or believed to be true. 36 A. 362.

—a suit makes statement which he believes not to be his own, 6 A. 626, 1 Weir, 154.

—false statement made under a verification constitutes an offence, 27 C. 820 but if the application need not be verified then it is not an offence, 9 W. R. 58, 10 W. R. 31, 6 C. 440, 25 A. W. N. 52, so where false statement is made in a petition for substitution it does

S. 191. (Giving false evidence)—*contd.*

not constitute any offence under s. 191 or 193 even though the petition is verified as no verification is required. 102 I. C. 214: 1927 Pat. 197: 28 Cr. L. J. 518 6 Pat. 184: 8 Pat. L. T. 412.

—false statement which incriminates the accused himself is also punishable. 3 M. H. C. Ap. 39.

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—an accused in a criminal case cannot be charged either with giving or fabricating false evidence with the sole object of diverting suspicion from himself and concealing his guilt in regard to a crime with which he is charged. 28 A. 705.

—one who instigates another to give false evidence is guilty of the offence of abetment of giving false evidence. 2 M. H. C. 438, (1893) Rat. Un. Cr. 532, 8 W. R. 5, but he must intend to make false statement. 20 W. R. 41.

—false statement in an affidavit does not constitute an offence. 19

—but false statement in an affidavit in support of a transfer application under s. 540 Cr. P. C. constitutes an offence under this sec. 99 I. C. 341: 1927 Sind. 113: 28 Cr. L. J. 133.

—a person making the false statement in an application for

Cr. 25, 1869, intentional
10 B. 288, false return
sale-warrant. 1 Weir

an offence under this

S. 192. (Fabricating false evidence).

Causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement.

—a person commits the offence of fabricating false evidence if he makes a document, which, though it may not contain any false statement in express terms, yet contains false recitals which imply such a false statement. 10 O. W. N. 220.

—altering the date of a document for the purpose of registration is an offence under this sec. 6 C. 482.

—the accused, who cheated his mortgagee by executing in favour of his wife and of the mortgage-deed but inquired in the Registration and during trial made

S. 192. Causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement—*confd.*

endorsement on the back of the document as to the return of the consideration, he was rightly convicted both for cheating and fabricating evidence. 12 A. L. J. 104.

—where the accused assisted in concealing stolen Railway pins in the house of a certain person with a view to have the innocent person punished as an offender he committed the offence of fabricating false evidence and voluntarily assisting in concealing stolen property under s. 414. 1 A. 379.

—fabrication of false evidence by altering the date in a document is punishable under s. 192 I. P. C. 28 C. L. J. 213.

—but where the alteration of date was not intended to lead any one to form an erroneous opinion touching the date of sale, there was no offence 40 A. 35 : 15 A. L. J. 819.

—whether the brother of an accused applied for the identification of the accused by the prosecution witnesses and he produced the witnesses could not identify and where the accused was pointed ther, he was guilty of fabricating

—where a public servant in charge of certain document, being required to produce them and being unable to do so fabricated and produced similar documents, he was guilty of fabricating false evidence. 5 A. 553.

—where the yearly tenant of a house prepared another's rent-note for four years and got it registered without the consent of the owner, he fabricated false evidence in as much as the rent-note, which contained an admission against the interest of the accused, could be admitted in evidence on his behalf. 22 Bom. L. R. 1229, (1892) 16 P. R. of 1894.

—tutoring a man to give false evidence amounts to "causing of circumstances to exist" within this sec. and is punishable under s. 194 I. P. C. 1927 All. 721 : 105 I. C. 662 : 28 Cr. L. J. 950 : 50 A. 365. 25 A. L. J. 1077.

—false dying declaration not communicated to the authorities—no inference can be drawn against a man who was thought to be dying at the time of making the statement. 1930 Pat. 550 : 1930 Cr. O. 1094.

Intending.

—the intention being the gist of the offence mere indiscretion in signing a fabricated document without knowing its contents, will not render a person liable. 17 A. L. J. 574.

Judicial proceeding.

—it means nothing more or nothing less than a step taken by the court in the course of the administration of justice in connection with a case pending. 2 M. 11 C. 43

S. 192. in a proceeding taken by law before a public servant as such or before an arbitrator—*contd.*

—if the fabricated evidence is not admissible in evidence then no offence is committed. 6 A. 42, 21 A. 159, 5 M. H. C. 373, 10 C. L. R. 433, 2 C. L. J. 46, (1913) 1 P. R. 1914 *contra*, 46 C. 986, 16 Cr. L. J. 620, (1917) 13 P. R. 1918.

May cause any person... result of such proceeding.

—if the alteration in a document does not lead to form an erroneous opinion but leads rather to the formation of a correct opinion, no offence is committed. 40 A. 35.

—to constitute offence the false evidence must be material to the case though not so under s. 191, 23 A. W. N. 68 and it must form an erroneous opinion. 5 A. 217, 10 C. L. R. 187, 5 M. H. C. 373, 26 P. R. 1890, (1892) 16 P. R. 1894.

S. 193 (Punishment for false evidence.)

Scope of the section.

—the section consists of two parts: one relates to false statements and the other to the fabrication of false evidence. In case of false statement it should be set out in detail and it should not be left to the trying court to find out what statements are false and what not so and before taking action against a person for fabricating false evidence it is necessary that he should be given an opportunity to substantiate his allegation. 1925 Mad 1157: 1925 M. W. N. 470.

Intentionally gives false evidence.

—to constitute the offence intention is the essential ingredient. 3 C. W. N. 81, 13 C. W. N. 422, 72 P. L. R. 1911: 14 P. W. R. 1911.

—the court may infer the corrupt intention from surrounding circumstances. 2 W. R. 63

—if the statement was false and known or believed by the accused it may be presumed that the accused intentionally gave false evidence. 3 N. W. P. 133, 3 U. B. R. 84.

—it is intended that the person making the statement may believe the intention of that it is true. 6 A. 100.

in a written statement of a deft. declared by the legislature as 13, 1930 All. 490: 193 A. L. J. All 383, 27 P. R. 1894, 25 C. W.

—false statement in the affidavit of an identifier as to the service of summons is punishable under this sec. if the affidavit was intended to be used in a judicial proceeding, otherwise it is punishable under s. 199 I. P. O., 106 I. O. 703: 6 Pat. 760: 29 Cr. L. J. 311: 1928 Pat. 161.

S. 193. (Intentionally giving false evidence)—contd.

—false statement in an affidavit in support of an application though it does not require to be supported by an affidavit, constitutes an offence under this section. 28 Cr. L. J. 168: 1927 Sind. 128.

—when the law prohibits the administration of an oath or solemn affirmation to a person swearing an affidavit there can be no perjury but where the law does not prohibit it and where in fact the practice of the court directs that an oath or solemn affirmation must be administered before the affidavit is accepted there cannot be any protection for an accused. 1930 Oudh 62: 31 Cr. L. J. 600: 123 I. C. 854

—false answers to questions which should not or could not have been asked in a judicial proceeding, constitute the offence of perjury. 90 I. C. 715, 7 Pat. L. T. 428: 1926 Pat. 168.

—rash statement or statement without reasonable inquiry does not constitute an offence. 36 A 562.

—a witness is not guilty of perjury if he corrects a statement of his, previously made in the same deposition. 11 O. L. J. 309. 25 Cr. L. J. 1147: 83 I. C. 490.

—when a witness makes a

279, because the essence of the offence of perjury consists in an attempt to mislead and deceive the Court. 96 I. C. 505: 1926 Pat. 517: 27 Cr. L. J. 953, 26 M. 55 Dist.

—a deliberate overstatement of purchase-price in a suit for damages for non-delivery of goods by a Railway Company is an offence under this sec. 1924 Nag. 35.

—no man can be convicted of giving false evidence except on proof of facts which if accepted as true, show, not merely it is incredible but that it is impossible that the statements of the accused made on oath can be true. 1 Rang. 290. 1924 Rang. 17.

—the intention to commit perjury must be clearly present before a person charged with the offence can properly be convicted of it and a statement capable of being construed in any reasonable way that does not show a clear intention of committing perjury or a deliberate attempt to make a false statement does not *per se* contain the elements of the offence and where a prosecution for perjury is sought to be based on an affidavit filed in court the court should take a broad view of the facts and where it amounts to an inaccurate description of events which have happened, a prosecution for perjury is not sustainable. 1 Pat. L. R. 17: 72 I. C. 887: 24 Cr. L. J. 471.

—to convict a person of perjury it must be shown that the statements made by the accused are on their face deliberately false, or that they are so from extrinsic circumstances. Statements

S. 193. (Intentionally gives false evidence)—contd.

which only attract suspicion or which are made recklessly should not form the basis of conviction. 4 Pat. L. T. 683; 1 Pat. L. R. 142; 72 L. C. 161; 24 Cr. L. J. 321.

—if the statements are designedly false the accused is liable irrespective of the fact whether the statement is material to the inquiry before the Court. The materiality or immateriality can have a bearing upon the sentence to be passed. 1929 All. 936; 1929 Cr. C. 664; 30 Cr. L. J. 1154.

—where the witness replied that he had no knowledge as to whether his son had been arrested by a certain head-constable some under this section unless personal knowledge of the
17 Lah. 874; 29 Panj. L. R.

—prosecution under this section is legal even if false statement is made before a court when an oath is administered. 85 L. C. 710; 1925 All. 410; 26 Cr. L. J. 566.

—In cases or countercharges on affidavits order should be passed after directing an inquiry under s. 476 Cr. P. C. 53 C. L. J. 184; 1931. Cal. 344.

In any stage of judicial proceeding.

—this means any step taken by the court in the course of administration of justice in connection with a case pending. 3 C. W. N. 81.

—the prosecution is to show that there was on the day stated in the charge a judicial proceeding and the accused, in the course of that proceeding, made the false statement. 10 W. R. 37, 25 W. R. 23.

—a court holding a preliminary inquiry under sec. 476 Cr. P. C. is a stage of judicial proceeding and a person giving false evidence in the course of it commits offence under this sec. 37 C. 52; 14 C. W. N. 132.

—statements made during the course of police-investigation in a stage of a judicial proceeding within the meaning of evidence in any other case under this sec. 45 B. 834, 18 B. 377.

—false allegation in an affidavit put in by an accused person in support of a petition for transfer can be the subject of prosecution for an offence under s. 193 I. P. C. The law does not give immunity from criminal liability for making a false statement except under s. 342 (2) Cr. P. C. 6 Lah. 34; 26 P. L. R. 158; 1925 Lah. 312.

—the nazir of a subordinate Judge's court is not authorised to administer an oath to a person who swears to an affidavit to be used in a criminal court and consequently the deponent cannot be prosecuted under s. 193 I. P. C. in respect of the statement contained in the affidavit. 31 Bom. L. R. 144; 1929 Bom. 136; 116 I. C. 248; 30 Cr. L. J. 593.

S. 193. (In any stage of judicial proceeding)—*contd.*

—Investigation by a Magistrate as regards sufficiency of ground for taking action under s. 11 of the Frontier Crimes Regulation is not a "judicial proceeding" 6 Lnh. L. J. 375 : 82 I. C. 710 : 25 Cr. L. J. 1350.

For "judicial proceeding" see s. 192 I. P. C.

In any other case.

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Fabricates false evidence for the purpose of being used.

—If the evidence is fabricated for the purpose of being used in any stage of judicial proceeding the offence is complete, even if the judicial proceeding has not yet commenced. 2 A. 105.

—It is not necessary that the evidence should be intended to be used in a judicial proceeding taken by law before a court of law. 403 52 B. 385 : 30 Bom. L. R.

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that the accused intended that person to entertain an erroneous opinion upon the evidence. 23 A. 63.

—where the accused fabricated certain document purporting to have been executed for the interest of certain women alleging her to be his wife in order to secure her person, held that as this could under the circumstances be done only by judicial proceedings, his intention was to use the document with its false statement in a judicial proceeding, and thereby to mislead the court and he was therefore guilty of an offence under s. 193 I. P. C. 48 C 911 66 I. C. 996 23 Cr. L. J. 340.

—the purpose with which a document might have been prepared is a matter of inference that the intention was that the document in question should be used in a judicial proceeding even though such a proceeding had not been in fact instituted. 42 C. L. J. 215 : 1926 Cal. 224, 90 I. C. 534, 28 C. W. N. 880.

—where the accused sent a registered and insured packet containing waste paper to the complainant who gave an acknowledgment receipt and subsequently when the complainant sued for money the accused filed the receipt to prove discharge of the debt, he committed an offence under s. 193 I. P. C. 99 I. C. 102 : 1927 Mad. 199, 28 Cr. L. J. 70 : 38 M. L. T. 187 : 51 M. L. J. 800.

S. 193. Contradictory statement.

—where contradictory statements are made before the same person, sanction to prosecute under s. 193 I. P. C. should be granted. 5 Lah. L. J. 407.

—a person can be charged and committed for perjury even though his prior deposition has not been taken down in strict compliance with Or. 18 rr. 5 and 6 C. P. C., 1923 Nag. 39: 18 N. L. R. 192: 68 I. C. 36: 23 Cr. L. J. 500.

—the provisions of Or. 18 rr. 5 and 6 C. P. C. are directory and non-compliance with them does not render the deposition inadmissible at a subsequent trial of the deponent for perjury. If the deposition has not been read over to the witness it does not prove itself under s. 80 Evi. Act, but may be proved in some other way. The judge who recorded it can prove it or the accused can admit it. 1923 Nag. 39: 18 N. L. R. 192: 68 I. C. 36: 23 Cr. L. J. 500, 45 C. S. 25 fol.

—where one statement is made before a M. not authorised to carry on preliminary inquiry and the other before a competent M. there cannot be alternative charge, under s. 236 Cr. P. C., of giving false evidence. 11 B. 702 F. B., 14 Bom. L. R. 753, 22 A. 115, 28 A. W. N. 73, 5 M. L. T. 356.

—statement made under s. 164 Cr. P. C. may be linked with statement which is evidence in a stage of judicial proceeding following on the investigation, so that the two can be said to be a series of acts to which an alternative charge can be framed under s. 236 Cr. P. C. 45 B. 834: 22 Cr. L. J. 241: 60 I. C. 593: 23 Bom. L. R. 91 F. B., 18 Bom. L. R. 377 F. B., *overruled*.

—any charge for giving false evidence founded on statement made during examination by a Magistrate for the sake of obtaining information only, is bad and a conviction and sentence founded on such statement as being contrary to another statement made by the accused when examined as a witness, at the trial, without any proof of finding that the second statement was false, could not be maintained. 27 C. 455

—to convict a person it is not necessary that the contradictory statements must be made at different inquiries or trials. 26 M. 55, 10 C. 937, 16 O. C. 81.

—where a witness told a false story before the committing M. and a true story at the trial before the court, held that having regard to the circumstances of the case, sanction to prosecute him for perjury should not be given. 14 C. W. N. 767: 1 Cr. L. J. 251.

—every possible presumption in favour of the reconciliation of the two statements should be made and it must be found that they are absolutely irreconcilable. 7 A. 44, 8 M. L. T. 86, (1910) M. W. N. 397, 2 P. L. W. 176, 158 P. L. R. 1911, 6 Bom. L. R. 379 and when the two contradictory statements are matters of inference or opinion about which a man may take one view at one time and a contrary view at another time there can be no perjury, unless the accused has on oath stated facts on which his first statement was based and then denied those facts on oath on a subsequent occasion. 6 Bom. L. R. 379.

S. 193 Contradictory statement—confd.

—where the two statements alleged to be contradictory were not in fact wholly irreconcilable a conviction for perjury was not sustainable. 1928 Lab 125 : 29 Punj. L. R. 14 : 107 I. C 100 : 29 Cr. L. J. 312.

—it is necessary to prove that the statements were such that

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ruth. 21 P. R.

Sanction.

—the court is bound to satisfy itself that there is at least a *prima facie* case, and that if a sanction is granted, there is reasonable prospect of a successful termination of the prosecution. 15 C. L. J. 1337, and that a prosecution is necessary in the interest of justice. 2 M. W. N. 172

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ould have all

L. J. 1396.

—in view of the definition of complaint in the Cr. P. C. the particulars of the offence under this section must appear in a complaint preferred by a court under s. 376 Cr. P. C. 52 C. 478 : 89 I. C. 251 : 1925 Cal. 721 : 26 Cr. L. J. 1307.

applicant was bound to state the truth before a court of justice. 85 I. C. 710 : 26 Cr. L. J. 566.

S. 193. Sanction—contd.

—the offence is complete when the false statement is made in the court of first instance and it is not re-committed in the Appellate Court by the production of the record or otherwise so as to entitle the Appellate Court to grant sanction as an Appellate Court. 41 M. 787.

Charge

—the charge should be precise and should state the particular matter or matters distinctly, 9 W. R. 25, 54, 8 W. R. 95, with the precise words, 17 W. R. 32, 23 W. R. 28, 28 C. 348, 9 W. R. 54, 9 W. R. 14.

—It should state the place and occasion of committing the offence. 16 W. R. 47.

—a charge not reasonably sufficient to give the accused notice of the matter with which he is charged, is bad. 38 C. L. J. 163.

—there may be alternative charges framed under this section. 7 A. 44.

—a number of persons cannot be jointly charged with intentionally giving false evidence under this section. 16 W. R. Cr. 47; 7 Bom. L. R. App. 66.

—each accused under this section should be independently charged. 9 W. R. (Cr.) 66, 5 Bom. H. C. R. 55.

—In cases under this section the case of each accused should be separately inquired into and tried. 6 M. 252, 10 C. 405, 4 A. 293, 5 A. 17.

—any number of false statements made in the same deposition is one aggregate case of giving false evidence and charges cannot be multiplied. 36 C. 808. 6 M. H. C. R. App. 27.

Trial.

—It has been held that where the provisions peculiar to the Indian Law do not apply, the rule of English Law which is founded on substantial justice may well serve as a safe guide to those who have to administer the Criminal Law in India. 6 Bom. L. R. 339, 342.

—Identity of the person making the statement must be clearly proved. 13 W. R. 56, 8 W. R. Cr. 16, 13 C. W. N. 402, the mere production of a certified copy is not sufficient to show that the accused is the person who made the statement; there must be oral evidence of some one who heard the deposition given, that the accused is the person whose evidence is there recorded. 1 L. B. R. 268.

—In view of the definition of complaint in the Cr. P. C. the particulars of the offence under s. 193 I. P. O. must appear in a

S. 193. Trial—contd.

complaint preferred by a court under s. 476 Cr. P. C. 52 C. 478 : 89 I. C. 251 : 1925 Cal. 721, 26 Cr. L. J. 1307.

—the complaint should contain sufficient particulars as to the offence with which an accused is charged under s. 193. 1925 Mad. 1157 : 1925 M. W. N. 470.

—it is always necessary to prove the deposition alleged to contain the false statement. 7 W. R. 13.

—the deposition must be read over and interpreted to the witness before he signs it. Omission to interpret and read over the deposition to the witness is not a mere irregularity but renders the record inadmissible in proof of the deposition under s. 91 Evi. Act. 42 M. 561, and the accused cannot be prosecuted for perjury. 103 I. C. 107 28 Cr. L. J. 651, *Contra* 34 M. 141.

—omission to read over a deposition to a witness as required by s. 360 Cr. P. C. is an illegality. 28 C. W. N. 968.

—it must be read over in the presence of the accused or his pleader, 12 C. W. N. 845, (1917) 2 P. L. W. 176, even though it is read by him 42 C. 240.

—but it has been recently held that the perusal of the deposition by a witness is a substantial compliance with r. XVIII, Or. 5 of the C. P. C., and such deposition when duly signed by the Judge, is admissible under s. 80 Evi. Act, without proof on a subsequent trial of the deponent for giving false evidence. 46 C. 895.

—the provisions of Or. XVIII, rr. 5 and 6 of the C. P. C. are directory and non-compliance therewith does not render the evidence inadmissible in a subsequent trial of the deponent. 45 C. 825.

—s. 360 (1) Cr. P. C. is complied with if the deposition of a witness is read over to him in the presence of a pleader for one out of twenty seven accused : the deposition so read over is admissible against the deponent on his trial, for false evidence. 36 C. 808.

—it must be read as a whole and the witness must be allowed to correct himself. (1890) Rat. Un. Cr. 502, 19 Bom. L. R. 61.

—it must be recorded with all due formalities in the manner required by law. (1916) 15 P. R. 1917.

—it is necessary to see that the statement has been deliberately made and recorded and has been attested by the M. following a certificate to be given under his hand. 7 W. R. 49.

—s. 11 of the Oaths Act, does not prevent the court from attempting to establish that a particular statement made by a person was false in fact and false to his knowledge and thus to establish that by making the statement the person gave false evidence within s. 193. 26 Bom. L. R. 713. 82 I. C. 359; 25 Cr. L. J. 1287.

—exact words used by the accused must be proved. 23 W. R. 23.

—the deposition is not the proceedings in the case. The contents of the deposition are not the contents of the proceedings. (1888) Rat. Un. Cr. 401 : C.

S. 193. Trial—contd.

—the record of previous deposition is relevant and necessary evidence and not inadmissible under s. 145, Evi. Act. 9 C. L. J. 378.

—a hearsay statement recorded by a M. cannot be made the subject of prosecution under this sec. 7 A. L. J. 618.

—reading extracts from the alleged conflicting statement of an accused is not sufficient to enable the jury to form a fair opinion on the question. (1864) W. R. (gap no) 10.

—making of any number of false statements in the same deposition is an aggravated case of giving false evidence and charges cannot be multiplied according to the number of false statements contained in a deposition. 36 C. 808, 6 M. H. C. Ap. 27.

—where prosecutions arise out of the same case and two courts take contradictory views of occurrence prosecution for perjury should be stopped. 26 A. L. J. 1327; 29 Cr. L. J. 784; 1928 All. 548; 110 I. C. 816.

—each person should be separately charged and tried for giving false evidence. 1 A. 17, 4 A. 293, 2 A. W. N. 124, 18 C. 405, 7 W. R. 51, 9 W. R. 66, 16 W. R. 47, 7 B. L. R. Ap. 66, 11 W. R. 16, 6 M. 232, 2 N. W. P. 21, 5 B. H. C. Cr. 55.

—it is improper for an appellate court to order prosecution for perjury in the lower court for materials which were not before that court. 10 C. W. N. 1091, 1093.

—when order for prosecution is made for making false statements amounting to perjury in the course of administrative inquiry no appeal lies against the order. 1929 All. 936; 30 Cr. L. J. 1154; 1929 Cr. C. 664, 42 A. 130 fol.

Proof

—exact statements in detail upon which the prosecution wants to proceed must be set out. 43 I. C. 585; 4 Pat. L. W. 41; 19 Cr. L. J. 169; (1918) Pat. O. W. N. 13, 23 W. R. (Cr.) 28.

—the statement which is the subject matter of the charge should be clearly proved to have been made by the accused. 13 W. R. (Cr.) 56, 9 W. R. (Cr.) 52.

—no man can be convicted for giving false evidence except on proof of facts which, if accepted as true, show, not merely that it is incredible but that it is impossible that the statements of the
 the inference from the facts
 can stand, because it is still
 11 W. R. 25, 5 P. L. J. 23.

—the proceedings in a criminal trial when necessary to be proved should be proved by their production. 8 B. H. O. Cr. 37.

—the record of proceedings in small cause court is not admissible in evidence unless authenticated by the signature of the Presidency Judge. 6 B. L. R. 730 n.

—previous statement may be proved to be mistaken or untrue unless another person has been induced thereby to change his position. 11 C. W. N. 321 n. 322 P. C.

S. 193. Proof—*contd.*

—in cases of perjury it must be proved that oath was duly administered. 50 I. C. 978. 20 Cr. L. J. 370 (All).

—but in a case where as a matter of fact no oath was administered to the applicant and the lower court gave sanction for prosecution under s. 193 I. P. C., held, assuming that such was the case the applicant was bound to state the truth before a court of justice. 85 I. C. 710 : 26 Cr. L. J. 566.

—when a witness in a probate case is prosecuted for perjury the judgment of the Probate Court is not admissible. 38 C. L. J. 163.

—former statements of witnesses cannot be used as substantive evidence, they can be used in certain circumstances to contradict or corroborate them. 38 C. L. J. 163.

S. 194. Giving or fabricating false evidence with intent to provoke).

—according to Calcutta High Court, a statement, even if made to a police officer, will amount to an offence, provided that the court can infer that it was the intention of the accused to stick to the false evidence right up to the trial of the case. 20 W. R. 41, but according to Bombay High Court, it refers only to the final stage, that is the trial of the case. Rat. Un Cr. 80, 1874

—a person giving false evidence before a M. holding a preliminary inquiry into a charge of murder, does not commit offence under this sec. 32 P. R. 1886.

—where the witness stated on oath before the Court of Sessions that another had committed the murder whereas before the committing M. he had stated that the prisoner had committed it, he was guilty under s. 193 and not under this sec. 3 B. L. R. 35.

—it is difficult to affirm the existence of an intention to cause, or of knowledge that the false evidence is likely to cause, a person to be convicted of a capital offence when the proceeding in which the evidence was given is one in which such a conviction is not that the offence of a person head constable in an inquiry for s. 194 I. P. C. 65 I. C. 434 :

S. 195. (Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment.)

—in the case of a person who burnt his own house and charged another with the act, held that he was to be punished not under this section but under s. 211, 8 W. R. 65, but in the case where he did not charge any one, he was not guilty at all. 5 N. W. P. 188.

—where the accused made false coins with a motive of passing them secretly into the house of his enemy in order to get him into trouble, he committed an offence under this sec. and sec. 232 or 235. 17 P. W. R. 1912.

S. 195. (Giving or fabricating false evidence with intent to procure conviction of offence punishable with transportation or imprisonment)—*contd.*

—photographing persons charged with dacoity, by itself, does not amount to attempting the offence of fabricating false evidence. 35 I. C. 931; 14 A. L. J. 688; 17 Cr. L. J. 431.

—persuading a woman to make a statement that she had seen certain persons whom she mentioned by name as having committed dacoity on her premises is not sufficient to constitute an offence under this section. 30 I. C. 651; 16 Cr. L. J. 667. (All.)

S. 196. (Using evidence known to be false.)

—this sec. applies to those who make use of such evidence as is made punishable by ss. 193-195, it must be read with ss. 191 and 192. 7 M. 289.

—an intention to procure a false conviction is a corrupt intention. 139 P. L. R. 1914 : 23 I. C. 696 : 15 Cr. L. J. 344.

—evidence does not include a document, so the accused who uses a forged document is to be punished under s. 471, 5 C. 717: 6 C. L. R. 118, *contra*. 7 M. 289, 7 A. W. N. 285, but swearing to the authenticity of a false document is punishable under this sec. 3 W. R. 17.

—to constitute an offence under this section there must be some evidence in existence which the party is either using or attempting to use. 35 L. C. 830: 17 Cr. L. J. 388 (Mad).

—where several persons are accused of having given false evidence in the same proceeding, they should be tried separately. 4 A. 293.

—under s. 196 the mere user of false evidence is sufficient, the user must be corrupt. The desire to screen an offender from the legal consequences of an act could well be designated a corrupt motive 46 B. 317; 64 I. C. 503; 23 Bom. L. R. 987; 23 Cr. L. J. 23; 1922 Bom. 99.

—where the accused gave his pleader a copy of a document which had been falsified by an interpretation being made in it for the purpose of its being used in the trial of his slut, he was guilty under ss. 196 and 471. 26 C. 863; 3 C. W. N. 653.

—where the accused produced as evidence an account-book, one page of which had been fraudulently abstracted and another —less he know of for the purpose the book was

—the mere fact that it was the accused who produced the accounts into court cannot support a conviction under s. 196 unless there is evidence that the accused knew that the interpretation in the account was a false statement. 48 M. 395; 85 I. O. 449; 26 Cr. L. J. 801; 48 M. L. J. 290.

—to constitute an offence under this section documents should have been corruptly used or attempted to be used as true or

S. 196. (Using evidence known to be false)—contd.

genuine evidence; producing the documents in court in obedience to an order of court to that effect does not constitute the offence as independent volition on the part of the accused is absent. 85 I. C. 253; 1925 Rang. 191; 26 Cr. L. J. 509, 36 M. 387 fol.

—a S. J. is not debarred by s. 487 Cr. P. C. from trying a person for an offence punishable under s. 196 I. P. C. when he has, as Dt. J. given sanction for the prosecution 16 C. 766 F. B. 16 C. 121 overruled

S. 197. (Issuing or signing false certificate).

—a certificate under this sec. means either certificate that is required by law to be given or signed or that relates to any fact of which such certificate is by law admissible in evidence. 23 C. L. J. 423; 20 C. W. N. 620; 33 I. C. 316; 17 C. L. J. 140.

—a copyist who made an incorrect copy of a document filed with a record committed an offence under this sec. (1878) 15 P. R. 1879.

—the word "certificate" contemplates a certificate which is required by law to be given or signed for the purposes of being used in evidence in the course of administration of justice, so a certificate given by an authorised agent of a female depositor in the Savings Bank when withdrawing money to the effect that the depositor is alive is not such a certificate as is contemplated by this section as it is not prescribed by the Govt. Savings Bank or Statutory rules made thereunder. 30 C. W. N. 120; 42 C. L. J. 557; 1926 Cal 259

—as the Bengal Land Registration Act does not require a certificate to be signed or given, a person registering his name under the said Act on the allegation that the real person is dead cannot be prosecuted under this section. 42 I. C. 594; 18 Cr. L. J. 978; 3 Pat. L. W. 201.

For other cases see, "Certificate."

S. 199. (False statement made in declaration which is by law receivable in evidence).

—"declaration" means any statement of fact in the form simply of the declaration, which for the purpose of proof of the fact declared to, has by itself, all the legal force of evidence given on oath, or on solemn affirmation substituted for an oath; statement of witness in criminal trial made not on oath or solemn affirmation, is not a declaration. 4 M. H. C. 185, 8 B. L. T. 82.

—a declaration must be one which is admissible in evidence and which the court, before which it is made, is bound to receive in evidence. A servant is not so authorised. 20 C. 724, 14 C. 653, 17 Cr. L. J. 309; 28 I. C. 645.

—a declaration before it can be made the foundation of a prosecution under s. 199 I. P. C. must be one which is admissible in evidence and which the court, before which it is filed is bound or

S. 199. (False statement made in declaration which is by law receivable in evidence)—*contd.*

authorised by law to receive in evidence. 35 A. 58; 10 A. L. J. 462; 17 I. C. 401; 13 Cr. L. J. 769.

—a. 199 does not apply to application for execution containing false averments. 10 B. 288.

—where a written statement was filed which was verified as required by Or. 6 R. 15 O. P. C. but the court did not order the statements to be proved by affidavit, the allegations in the written statement could not by itself form the basis of a conviction under s. 199 I. P. C., 49 A. 482; 100 I. C. 707; 28 Cr. L. J. 323; 1927 All. 383, 22 C. 131 *Ref.*

—this sec. subjects any person making a false declaration which may be used as evidence of the matters stated therein to the penalties of perjury. 22 C. 131.

—It includes affidavit in cases in which evidence may be

... e affidavit as to the service of
199 I. P. C. 1928 Pat. 161; 6 Pat.

—but the falsity of the statement made in the affidavit must be proved by the prosecution and the accused need not prove that it was true. 1928 All. 182; 29 Cr. L. J. 336; 108 I. C. 124.

—when a deponent in swearing an affidavit under s. 539-A swears of his personal knowledge of the truth of his allegation and the allegations are ultimately found to be false he is punishable under s. 199 I. P. C. 1929 Pat. 156; 116 I. C. 755; 30 Cr. L. J. 645, 14 C. 653. *Dist*

—where the M before whom an affidavit is sworn has not the power to administer an oath, 14 C. 653, when the statement made is not for but against the accused. 22 C. 131. When the petition containing the false statement is not signed by the accused but by the pleader, 7 C. L. R. 536, the accused is not punishable under this section.

—this sec. has no reference to the examination of the witness in a judicial proceeding. 4 M. H. O. 185.

—In order to come within the purview of this section the statement must be one which is either false to the knowledge of the defendant or which he ought to have known to be false or which he could not have believed to be true. 33 M. L. J. 545; 22 M. L. T. 290; 18 Cr. L. J. 636; 39 I. C. 1004.

—where false declaration was made in written statement by denying the execution of a handnote on the 18th July, 1919 but it was admitted subsequently in a criminal proceeding initiated on the 6th November, 1919, ends of justice did not require a prosecution in respect of the written statement after this lapse of time. 25 C. W. N. 886.

—where A by personating as B before a Mohamedan Registrar of Marriages obtained the registration of B's divorce from his wife and the accused identified A as B before the Registrar, he was not

S. 199. (False statement made in declaration which is by law receivable in evidence)—*contd.*

guilty under s. 199 in as much as the Registrar was not bound or authorised by law to receive his statement in evidence. 9 C. W. N. 69.

—assertions made by a personal knowledge but from which not been proved to be incorrect a sanction for perjury. 21 L. J. 747.

—the accused is entitled to know the exact words which are alleged to have been used by him and which are sought to be made the subject of a charge of perjury. An inaccurate expression in an affidavit supporting an application for transfer of a case to another court does not warrant a prosecution for perjury. 21 A. L. J. 211; 71 I. C. 661; 24 Cr. L. J. 197-1923 A 325, 14 A. L. J. 851, 15 A. L. J. 517, 18 A. L. J. 381 *Ref.*

—a Dt. J. cannot sanction a trial for perjury in respect of an affidavit sworn before him as Dt. Registrar as a 195 Cr. P. C. has no application. 21 A. L. J. 88; 74 I. C. 75 25 Cr. L. J. 747.

S. 201. (Causing disappearance of evidence of offence or giving false information to screen offenders).

—this sec. is an attempt to define the position known in English Law as that of an accessory after the fact. It is settled

57 *Diss.*

—this section does not apply to the principal offender but to one who assists the principal to escape the consequences of the offence. 8 B. H. C. Cr. 126, 8 Bom. L. R. 538, 20 A. 705, 5 W. R. Cr. 5, 7 W. R. 52, 22 C. 638, 2 A. 713, 7 A. 749, 8 A. 252, 27 M. 271, 25 P. R. 1881, 4 P. R. 1877, nor does it apply to a case where the person, who is the probable or possible offender, makes statements exculpating himself by inculpating another. 6 C. 789.

—a murderer cannot be charged under s. 201 I. P. C. with causing evidence to disappear by concealing the corpse, because a principal cannot be convicted as an accessory. 86 I. C. 973; 26 Cr. L. J. 909. 1925 Sind. 306, 21 N. L. R. 86; 1925 Nag 407 91 I. C. 236; 27 Cr. L. J. 60, 97 I. C. 41. 1926 All. 737. 49 A. 57; 27 Cr. J. 1068.

—In order to justify a conviction under s. 201 I. P. C. it is necessary that an offence for which same person has been convicted or is criminally responsible should have been committed. There must be an intention to screen a specified offender. 86 I. C. 961. 26 Cr. L. J. 897.

S. 201. (Causing disappearances of evidence of offence or giving false information to screen offenders)—contd.

—the essence of this sec. is that the accused caused the evidence of the commission of the offence to disappear with the intention of screening the offender from legal punishment. 1930 All. 45 : 120 I. C. 268 : 31 Cr. L. J. 37 : 1930 Cr. C. 61.

—a conviction under this section as accessories to an offence known or believed to have been committed by themselves is illegal. 21 N. L. R. 86 : 1925 Nag. 407, 103 I. C. 402 : 1927 Sind. 241 : 28 Cr. L. J. 674 ; therefore the word "offender" in s. 201 refers to a person other than the person charged. 103 I. C. 402 : 1927 Sind. 241 : 28 Cr. L. J. 674.

—but a conviction under this section of the accessory to the offence is not illegal merely because it is suspected *but not proved or admitted* that the accused committed or was one of the several persons who committed the principal offence. 103 I. C. 402 : 1927 Sind. 241 : 28 Cr. L. J. 674.

... of great suspicious circumstances
... principal offender his conviction
... I. C. 427 : 47 I. C. 275 : 19 Cr.
... R. 1895, 1 L. B. R. 816,
and the acquittal of the accused as principal offender does not prevent his conviction under this section (1903) 1 P. R. 1904, 1928 Lah. 906 : 110 I. C. 682 : 29 Cr. L. J. 746, *contra*, 22 O. 638, 6 C. 759 : 8 C. L. R. 207.

—where the wife in order to screen the real offender gave false information to the police accusing another person of the offence of murder of her husband she could in law be convicted under this section as also under s. 203. 46 O. 427 : 47 I. C. 275 : 19 Cr. L. J. 903.

—where the accused had knowledge of the murder and also produced certain ornaments belonging to the deceased and a confession of guilt made by the accused to the lamborder under promise of immunity was also relied on, the evidence was sufficient to support a conviction under s. 201 and not under s. 302 I. P. C., 1928 Lah. 858 : 111 I. C. 449 : 29 Cr. L. J. 865 : 29 Punj. L. R. 486.

—this section does not apply if the offence has not been
... an acquitted of the offence, 3 A.
... 721 : 6 S. L. R. 76, 12 A. 432,
... when the offence is that of suicide.

—the expression "any evidence of the commission of that offence" refers not to evidence in the extensive sense in which that word is used in the Evl. Act but to evidence in its primary sense, as meaning anything that is likely to make the crime evidence such as the existence of a wounded corpse or similar material objects indicating that an offence had been committed. 63 I. C. 145 : 23 Bom. L. R. 823 : 22 Cr. L. J. 609.

—it must be proved that the accused knew or had information

S. 201. (Causing disappearance of evidence of offence or giving false information to screen offenders)—*contd.*

sufficient to lead him to believe that the offence had been committed. 11 C. 619, 7 P. R. 1867.

—It is necessary for the court to decide not so much what offence had been committed as what offence the accused knew or had reason to believe had been committed. The court must treat him to be a stranger to the crime, who had merely witnessed it. 1930 M. W. N. 489, 54 M. 68.

—intentional screening is necessary to be proved to constitute the offence 5 N. W. P. 186, 2 W. R. 43.

—when the accused finding a dead body in her house, of a girl murdered by her son, locked the outer door without moving or concealing the corpse, she was not guilty under this sec 52 P. R. 1905.

—but where the accused helped the murderer in concealing the dead body, he was guilty under this sec 6 W. R. 80.

—taking of measures to keep a person out of the way who
 and who was likely to
 not amount to causing
 meaning of the law. 21

P. R. 1864.

—when help is offered in removing a body from a house it must be presumed that the intention is to screen the murderer from punishment 47 A. 306 : 22 A. L. J. 25 : 86 I. C. 52 : 26 Cr. L. J. 675 : 1925 All. 315.

—while what the accused did would have been an offence under s. 201 I. P. C., if he had acted without overpowering compulsion, he is entitled to the benefit of doubt within s. 94 I. P. C. when he gives such help under compulsion. *above case*

—the mere removal of the dead body from one place to another in order to remove traces of the place of murder or indication which might implicate a particular individual, comes within this section even if such removal does not actually remove the undoubted evidence of murder. 49 A. 57 97 I. C. 44 : 1926 All. 737 : 27 Cr. L. J. 1068 : 24 A. L. J. 958.

—the marginal note of this section is a correct abbreviation of the section 22 C. 638, 46 C. 427 : 47 I. C. 275 : 19 Cr. L. J. 903 *not fol.*, Rat. (1895) 799 *Dist.*

S. 202. (Intentional omission to give information of offence by person bound to inform).

omission to give
 it been proved to

port the arrival of
 dacoits in his village and supplied them with food and drink he was guilty of an offence under this section as there was nothing to show that the dacoits committed any offence. Rat. (1881) 160.

—the accused should be legally bound to give the information. 9 B. L. R. App. 31 : 18 W. R. 31, 20 P. R. 1887, 125 P. R. 1881

S. 203. (Giving false information respecting offence committed).

—the object of the sec. is to discourage and punish the accused for giving false information. 20 W. R. 66, 46 O. 427; 47 I. C. 275; 19 Cr. L. J. 903.

—this sec. applies only to information volunteered by some person and not to information given to the Police during Police investigation in reply to question put to him. 7 A. L. J. 1150; 3 U. B. R. 204; 21 Cr. L. J. 700; 57 I. C. 940.

—the expression 'gives information' means volunteers information or at least makes positive statements. 20 W. R. 66, 19 I. C. 508; 14 Cr. L. J. 253; 6 S. L. R. 123.

—where a chowkidar gave false information that a person had died of cholera whereas he was murdered, he was guilty under this sec. though there was no motive to give false information. 1 W. R. 18.

—notwithstanding the existence of great suspicious circumstances against the accused as principal offender his conviction under ss. 201 and 203 is not vitiated. 46 O. 427; 47 I. C. 275; 19 Cr. L. J. 903.

S. 204. (Destruction of document to prevent its production as evidence).

—where a police officer at first took down the report of a dacoity and subsequently destroyed it and framed another false report of a totally different offence, he was guilty of this offence. 20 A. 307.

—preparation of a *panchnama* in place of an old one which was disfigured is no offence. 14 Bom. L. R. 1163; 1 Bom. Cr. C. 234; 13 Cr. L. J. 912; 17 I. C. 1008.

—where the accused wilfully and dishonestly destroyed two
 'act and the other a delivery'
 're found not to be valuable'
 ; and other sections might be

—where the accused snatched up a bond which was lying besides the arbitrator, ran away and refused to produce it, the offence committed was not theft, but secreting a document under s. 204 I. P. C. 3 M. 261.

S. 205. (False personation for purpose of act or procuring in suit or prosecution).

—the offence is committed even though the person personated consents to the personation. 1 M. H. C. 450, 1 Weir 182, 5 B. L. R. 138.

—the accused should have assumed the name and character of the person he is charged with having personated. Simply presenting a petition in the name of another person is not such personation. 8 W. R. 80.

—personation of an imaginary person is not punishable under

S. 205. (False personation for purpose of act or proceeding in suit or prosecution)—*confd.*

—false personation before a Registering Officer is punishable under this section. 5 Bom. L. R. 133.

—the word 'suit' ought to be confined to such proceedings as are directly dealt with by the C. P. C. under that description. 22 C. 943, 22 M. 256.

S. 206 (Fraudulent removal or concealment of property to prevent its seizure as forfeited or in execution.)

—when the property is already taken and the removal is subsequent, no offence is committed. 8 A. W. N. 237.

—the removal, concealment or transfer of property must be fraudulent. 18 W. R. 65.

—a person, who, to protect his own property from confusion with property which is liable for a decree, makes it over to another person does not commit any offence. 19 Bom. L. R. 535, 4 Bom. Cr. C. 119, 41 L. C. 160, 18 Cr. L. J. 784.

—fraudulent removal of property to prevent it from being taken in execution of a decree made by Collector constitutes offence under this sec. 2 B. L. R. 4, 10 W. R. 46, but see 8 A. W. N. 237.

—where the accused cut and carried off crops which were attached in execution of certificate under the Public Demands Recovery Act, he committed an offence under the second part of the section. 28 C. 217, 5 C. W. N. 291.

—the assignment by the decree-holder of a decree obtained upon the basis of a debt which is under attachment does not *per se* amount to the commission of an offence under this sec. because such assignment cannot affect the right of the attaching creditor. 26 A. W. N. 26, 3 A. L. J. 1.

—in the case of a transfer for valuable consideration, creditors who can only look to the property as available in execution, cannot object to the transfer as fraudulent if it has been made and accepted *bonafide*. 4 M. H. C. R. 84.

—the forfeiture contemplated by the sec. must be under a sentence pronounced by a Court of Justice or other competent authority. 8 A. W. N. 237.

—conviction without previous sanction is not bad if there has been no failure of justice. 28 C. 217.

—where the accused was charged under s. 206 I. P. C. with fraudulently transferring three properties to three different persons on a certain day, in order to prevent their being seized in execution of a decree and the prosecution tendered evidence of five other fraudulent transfers of property, this evidence was admissible under ss. 14 and 15 Evl. Act. 16 B. 414.

S. 209. (Dishonestly making false claim in court.)

—attempt to execute a decree cannot correctly be described as a false claim, the sec. relates to false and fraudulent claim. Court of Justice. 12 W. R. 37.

S. 209. (Dishonestly making false claim in court)—*contd.*

—the sec. applies also where the part of the claim is false. 10 A. W. N. 1.

—a person cannot be convicted both under this section and for falsely attesting the plaint, the latter being an ingredient of the former offence. 21 A. W. N. 187.

—the word claim in s. 209 I. P. C. cannot refer to a document produced in evidence to substantiate the relief asked for in the plaint. 28 M. L. J. 486.

S. 210. (Fraudulently obtaining decree for sum not due).

—the offence is committed when the decree is fraudulently obtained, and the fact that decree has not been set aside, though admissible in evidence to prove that there was no fraud, is not a bar to a prosecution under this sec. 33 C. 193.

—if there is no fraud no offence is committed. 64 P. L. R. 1914: 11 P. W. R. 1214

—the mere presentation of an application for execution of a decree is not sufficient, it must be executed. 23 C 971: 13 W. R. 37, 7 P. R. 1885, 13 P. R. 1902.

—"after it has been satisfied" does not mean the payment being certified to the court, it only indicates the fact of satisfaction of the decree. 16 C. 126, 4 M. 325, 9 M. 101, (1899) 1 U. B. R. (1897-1901) 278, 10 B. 288.

—where the decree-holder did not mention in his application for execution of decree the fact of his having received a certain sum of money from the Jt. Dr., he was guilty of an offence under s. 210 I. P. C., 59 P. L. R. 1911: 10 I. C. 646. 12 Cr. L. J. 189.

—where a fraudulent *ex parte* decree is obtained for a sum which had been disallowed in the former suit in which only a partial decree was allowed, the court in which the second suit was filed can take action under this section. 90 I C. 660: 1925 Lah. 524: 26 Cr. L. J. 1588: 7 Lah. L. J. 341: 26 Punj L. R. 717.

S. 211. (False charge of offence made with intent to injure).

(For the distinction between ss. 182 and 211, see notes under sec. 182).

Scope of the section.

are to 1
complain
means
(2) that to secure a conviction in this class of cases it must be established beyond reasonable doubt that the circumstances are not merely consistent with the guilt of the accused but entirely inconsistent with its innocence. 16 C. L. J. 433. To constitute an offence under s. 211 the "charge" therein referred to must be made to an officer or to a court who has power to investigate and send it for

S. 211. Scope of the section—contd.

trial, and it must be an accusation made with the intention to set the law in motion. 30 A. 715 : 15 A. L. J. 767.

—where on the report of a person to the police that he suspected certain person to have committed an offence the police made an investigation and found that there was no truth in it, the report did not amount to a "charge" and proceedings under s. 211 cannot be instituted. 88 I. C. 525 : 1925 Lah. 325 : 26 Cr. L. J. 1165.

—this sec. applies to all whether a private individual or an officer. 11 W. R. 2.

—intent to cause injury is a necessary element of this section. 7 C. 96.

—It must be established satisfactorily in the mind of the Judge or the Magistrate that the complaint was made with intent to cause injury or that it was a false complaint made with the knowledge that it was false. 6 Pat. L. T. 365 : 83 I. C. 701 : 1925 Pat. 329 : 26 Cr. L. J. 141.

—"instituting or causing to be instituted any criminal proceeding" is itself an offence apart from falsely charging 8 W. R. 87.

—making a charge to the Police in respect of a cognizable offence a criminal proceeding may be instituted under this sec. but in case of non-cognizable offence a charge before the Police is not such proceeding within the meaning of this sec. 17 C. 574 F. B., 5 W. R. 32, 22 B. 596, 20 M. 79, 2 N. L. R. 119.

—a charge laid before the police is a criminal proceeding within the meaning of this sec. 4 Pat. 472 : 1925 Pat. 678

—where the circumstances of the complaint before the M. are of a civil nature, no offence is committed under this sec. if they are found to be false. Ret. Un Cr. C. 3. (1865)

—the statement made to the Police Officer should not be reduced to writing in accordance with s. 154 Cr. P. C. 27 M. 127.

—the Legislature did not regard the two phrases, "institute or cause to be instituted criminal proceedings" and "falsely charge" as synonymous. The word "charge" is not to be taken in its ordinary sense, but in its technical sense, as a charge is a statement made to the police or a Magistrate, and it is not a charge unless it is made to the police or a Magistrate. The word "charge" is not to be taken in its ordinary sense, but in its technical sense, as a charge is a statement made to the police or a Magistrate, and it is not a charge unless it is made to the police or a Magistrate.

exclusive in meaning, so that the institution of criminal proceeding must be by something which is not a charge and a charge must be something which is not the institution of the criminal proceeding. This cannot be for two reasons; first, there is no mode by which a private person can institute criminal proceedings, except by making a charge; and if he does not do it by the 'charge' he never does it, to whatever length the proceedings may go, and secondly because the last part of the section speaks of proceedings instituted, on a false charge. 17 C. 574 p. 578 F. B.

—the term "institution" in s. 211 means the institution by the accused himself, or by the police or others in consequence of the accused's action, in some criminal court. 65 I. C. 434 : 23 C. J. 82 : 1922 Lah. 133.

S 211. *Scopa of the section—contd.*

—the word false charge must not be understood in any technical or restrictive sense, but in the ordinary meaning of false accusation made to any authority bound by law to investigate it or to take any steps in regard to it, such as giving information of it to superior authorities, and institution of criminal proceedings includes the setting of the criminal law in motion. A complaint to village M., in such a case amounts to a "charge" and is also institution of a criminal proceeding. It would be otherwise if the offence complained of is one in regard to which the information need not under s. 45 Cr. P. C., be passed to the higher authorities. 32 M. 258 F. B. *overruling* 31 M. 506.

—"false charge" means a false accusation made to any authority bound by law to investigate it or to take any step in regard to it. 1930 Pat 550; 1930 Cr. C. 1094, 32 M. 258 *Ref.*

—the true test seems to be, does the person, who makes the statement which is alleged to constitute the "charge" do so with the intention and object of setting the criminal law in motion against the person against whom the statement is directed; such object and intention may be inferred from the language of the statement and the circumstances in which it is made. 26 M. 640, *see also*, (1915) M. W. N. 272, 8 A. L. J. 1106; 14 P. R. 1872.

—to constitute an offence under this section it is sufficient that false charge is made though no prosecution has been instituted thereon. 46 C. 807, 27 M. 129, 1 A. 497.

—where a person at whose instance proceedings under s 211 I. P. C. are instituted, is never charged in any court nor is he ever put upon his trial before any Magistrate nor any proceedings were taken against him before the court in which another person who was alleged by the false complainant to be his accomplice was involved, it cannot be said that the offence under s. 211 I. P. C. was an offence which was committed in or in relation to any proceeding in court though another person against whom also false complaint was made in the same transaction is tried in court. 1928 Lah. 259; 9 Lah 408; 10 Lah. L. J. 218; 29 Cr. L. J. 603; 29 Punj L. R. 415, (43 C 1152, 44 C. 650) *Ref.*, 1924 All. 779, *fol.* (34 A. 522, 19 P. R. 1917) *not fol.*

—It is not a correct proposition of law to say that in every case of a complaint being summarily dismissed by the Magistrate it is for the complainant to justify that his complaint is a good and correct one. 98 I. C. 465; 27 Cr. L. J. 1345; 1927 All. 107.

—no summons is necessary to be issued upon the complainant. 26 A. 244.

—when the accused is under trial the charge should not be pending. 4 C. L. J. 88, 16 W. R. 67, 1 M. H. C. 30, 1 A. 527, 23 P. R. 1836

—a statement or information to the Police suspecting a certain person to have committed an offence is not a charge or institution of a criminal proceeding within the meaning of this sec., 8 C. L. R. 233, 19 B. 51, 1921 M. W. N. 1125, (1904) 12 P. R. 1905

S. 211. Soaps of the section—contd.

(1878) 14 P. R. 1879, 4 A. L. J. 361 : 27 A. W. N. 149, 6 Lab 28 : 26 P. L. R. 131, 4 Pat 472 : 1925 Pat. 678, but where the intention is to set the criminal law in motion an offence under this section is committed. 4 Pat. 472 : 1925 Pat. 678.

—there is an essential difference between a mere information to the police and a definite statement to it that a certain person has committed a particular offence, s. 211 applying to the latter case. 85 I. C. 818 : 26 Cr. L. J. 594 : L. R. 6 A. 71 Cr : 1925 Ail. 472.

—an application to the police not being inquired into, the applicant addressed a petition to the Deputy Commissioner for inquiry into the matter, held that the petition was not a complaint and action cannot be taken under s. 211. 75 I. C. 543 : 1924 Nag. 115 : 24 Cr. L. J. 959.

—but if suspicion is followed by active steps against the person suspected, then it is a charge. 19 W. R. 5, 16 P. R. 1870

—the false charge must be made to a court or officer competent to investigate and send it up for trial. 13 C. W. N. 398, 6 C. 620.

—a false charge against a public servant must be made to an officer competent to investigate and send it for trial. 33 C. W. N. 1058 : 1929 Cal. 724. 1929 Cr. C. 360. 122 I. C. 627. 31 Cr. L. J. 430.

—it must be an accusation made with the intention of setting the law in motion. 39 A. 715

—sending a telegram to the Collector saying that the Tahasildar and certain others in his absence entered his house and forcibly inoculated his wife and children and then stating before the M. on inquiry that he had heard that his house was forcibly entered into, was not a complaint in law and prosecution could not be maintained under this sec. 7 A. L. J. 618.

—statement before a Magistrate under s. 161 Cr. P. C. cannot constitute a charge under this sec. 31 M. 506, 6 M. L. J. 111

—to constitute the offence of instituting the criminal process without lawful ground for such process

—unless the person making a charge actually knows that there is no just or lawful ground for it, he is not guilty of the offence, and cannot properly be convicted of it. It is not enough to find that he has acted in bad faith, that is without due care or that he had no sufficient charge to be true. The law in acting upon information, natural malice, relevant evidences, more or less cogent, but the ultimate conclusion must be, in order to satisfy the definition of the offence, that the accused knew that there was no just or lawful ground for proceeding. It may be difficult to prove the knowledge, but however it may be, it

S. 211. "If such criminal proceeding be instituted."—*contd.*

—a complaint under s. 1 Breaches of Contract Act, which is withdrawn before any order is made, is not a criminal proceeding within sec. 211 I. P. C. 43 M. 443.

—a complaint to Village Magistrate is a charge and institution of criminal proceedings within this sec. if it is his duty to forward such complaint for action to the higher authorities. 32 M. 258 F. B.

—where a person informs the Police that he suspects, without deliberately charging him with the offence, it may not amount to giving false information within a 211 I. P. C. but where his intention was to set the criminal law in motion against X he is guilty under s. 211. 4 Pat. 472.

—lodging false information with the Superintendent of Police that the informant and his mother were wrongfully confined by the Police officers cannot entitle him to a criminal proceeding in . . . be summarily tried. 1930

is a criminal proceeding
t. 472.

—this part of the sec. would apply to such cases when the charge related to the more serious offence. 17 C. 574 F. B., 14 C. W. N. 556.

—it is not limited to the bringing of the charge before a M. When a charge of cognizable offence is made to the Police against the specified person, criminal proceeding is instituted thereby. 20 M. 79, 27 M. 127.

—it includes the setting of the criminal law in motion. 32 M. 258 F. B., 31 M. 506 overruled.

—but differing from the view of the Calcutta and Madras High Courts the Allahabad High Court and the Punjab Chief Court have held that where the offence committed does not go further than the making of a false charge to the Police, the making of such charge does not amount to institution of criminal proceeding notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph. 16 A. 124, 27 A. W. N. 149, 10 A. L. J. 429, 6 A. L. J. 989, 5 A. 215, 598, 16 A. 124, 3 P. R. 1888, 26 P. R. 1888, 26 P. R. 1908.

no other be

petition to
of Wards
meaning
of sec. 4 (b) Cr. P. C. and there being no institution of criminal proceeding, no offence was committed under this sec. 109 P. R. 1904.

—where the Police report regarding certain offences was

S. 211. Scope of the section—contd.

be proved and unless it is proved the informer must be acquitted. 29 P. R. 1894.

—where there are separate opinions of two different tribunals it may be taken as generally or normally safe guide to suggest that definite expression as to the malice of either party is desirable and the order for prosecution was not set aside. 3 Pat. L. T. 93, 66 I. C. 336 : 23 Cr. L. J. 272.

—a person cannot be proceeded against under s. 211 unless the Magistrate to whom the complaint was made had first investigated original complaint according to law. 95 I. C. 68 : 27 Cr. L. J. 740 : 1926 Bom. 284 : 28 Bom. L. R. 490.

—where the information of a theft is laid on the strength of the statement of another person, to prove the falsity of the information, the latter must be examined by the prosecution. 18 C. W. N. 391.

—an offence of instituting a false complaint not having been committed before the M. who orders the prosecution, or brought to his notice in the course of a judicial proceeding, the prosecution under s. 211 is bad. 7 C. L. J. 371.

—where a M. purports to act under s. 190 Cr. P. O. he should not order a prosecution before giving the accused person an opportunity of stating clearly whether he abandons his charge or wishes to support it. If he says the latter the court should give him an opportunity of putting forward what he wishes to say in support of the charge. 88 I. C. 829 : 26 Cr. L. J. 893.

—the offence under s. 211 is a non-cognizable one. The Police
on-cognizable offence and
does not amount to a
W. N. 317, 69 I. R. 81 : 23

—If a criminal case is compromised before the full evidence of the complainant is given, it is not proper to direct a prosecution under s. 211 I. P. C. 74 I. C. 1054 : 24 Cr. L. J. 862.

—to fall under this sec. the false charge must be made to some person in authority i. e., to a person who is in a position to get the offender punished. The charge must be embodied either in a complaint to a M. or in respect of a cognizable offence to a Police officer. 26 O. O. 44 : 1923 Oudh. 4, 16 C. 620, 30 O. 415, 26 B. 150, 32 M. 8) Ref.

—unless there is an intention to set the law in motion against anybody no offence under S. 211 I. P. C. is committed. 6 N. L. J. 202 : 75 I. C. 158. 24 Cr. L. J. 910.

"If such criminal proceeding be instituted".

—the criminal proceedings and false charges contemplated by sec. 211 I. P. C. mean proceedings instituted and charges made according to the provisions of criminal case law in force in British India 25 Bom. L. R. 722.

S. 211. "If such criminal proceeding be instituted,"—*contd.*

—a complaint under s. 1 Breaches of Contract Act, which is withdrawn before any order is made, is not a criminal proceeding within sec. 211 I. P. C. 43 M. 443.

—a complaint to Village Magistrate is a charge and institution of criminal proceedings within this sec. if it is his duty to forward such complaint for action to the higher authorities. 32 M. 258 F. B.

—where a person informs the Police that he suspects, without deliberately charging him with the offence, it may not amount to giving false information within s. 211 I. P. C. but where his intention was to set the criminal law in motion against X he is guilty under s. 211. 4 Pat. 472.

—lodging false information with the Superintendent of Police that the Informant and his mother were wrongfully confined by the Police officer constitutes institution of criminal proceeding in respect of cognizable offence and cannot be summarily tried. 1930 Cal. 711; 1930 Cr. C. 1111

—a charge laid before the Police is a criminal proceeding within the meaning of the section. 4 Pat. 472.

—this part of the sec. would apply to such cases when the charge related to the more serious offence. 17 C. 574 F. B., 14 C. W. N. 556.

—it is not limited to the bringing of the charge before a M. When a charge of cognizable offence is made to the Police against the specified person, criminal proceeding is instituted thereby. 20 M. 79, 27 M. 127.

—it is not the setting of the criminal law in motion. 32 M.

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charge does not amount to institution of criminal proceeding notwithstanding that the offence so falsely charged may be one of those referred to in the second paragraph. 16 A. 124, 27 A. W. N. 149, 10 A. L. J. 429, 6 A. L. J. 989, 5 A. 215, 398, 16 A. 124, 3 P. R. 1888, 26 P. R. 1888, 26 P. R. 1908.

—where a man burnt his own house and charged another he committed the offence under this sec. and s. 195, 8 W. R. 65.

—where the accused while on tour submitted a petition to the Deputy Commissioner against a manager of the Court of Wards held that the petition not being a complaint within the meaning of sec. 4 (b) Cr. P. C. and there being no institution of criminal proceeding, no offence was committed under this sec. 109 P. R. 1904.

—where the Police report regarding certain offences was found to be false he could not be prosecuted under this sec. as he had not instituted a criminal proceeding against any person, 4 C. W. N. 347, but when the report falsely implicated certain persons the Police was guilty. 2 W. R. 44.

S. 211, "If such criminal proceedings be instituted"—*contd.*

—where the accused submitted two false reports on the same facts one to the police and the other to the Magistrate, proceedings of the police under s. 182 I. P. C. is not vitiated by the fact that the Magistrate simply dismissed the report without commencing proceedings under s. 211 I. P. C. 1928 All. 342; 26 A. L. J. 533; 9 A. I. Cr. R. 458; 114 I. C. 189; 30 Cr. L. J. 272, but see 1928 Rang. 254; 6 Rang. 578; 114 I. C. 685; 30 Cr. L. J. 342, 1929 Sind 115; 30 Cr. L. J. 399; 115 I. C. 313; 23 S. L. R. 225; 1929 Cr. C. 106, 117 I. C. 37; 30 Cr. L. J. 10.

—where the police after inquiry made a report to the Magistrate that the case brought by the complainant was maliciously false and it was not challenged by the complainant his conviction under s. 211 I. P. C. was not invalidated by reason of the failure of the Magistrate to issue notice to the accused. 1929 Pat. 650; 1929 Cr. C. 378; 120 I. C. 48; 8 Pat. 734; 30 Cr. L. J. 1144, 6 O. 496 and 14 C. 707 *Exploined*.

—where a complaint is partly true and partly false the case must depend upon its own circumstances having regard to the fact whether it is substantially true or substantially false. 5 O.W.N. 727.

—compounding of offence is not conclusive answer to a charge under this sec. 11 C. 79.

—a person cannot be convicted of abatement of false charge only for giving evidence in support of such charge. 9 B. L. R. Ap. 16, 10 C. L. B. 4.

—where false complaint is made and proceedings are taken in good faith by Magistrate without jurisdiction the complainant will not be liable for prosecution for false complaint. 1930 Pat. 550; 1930 Cr. C. 1094, 1929 Pat. 400 *fol.* (17 C. 574, 32 Mad. 258) *Dist.*

Triel.

—failure on the part of the accused to establish the truth of his allegation does not give rise to the inference of its falsity. The prosecution must establish beyond reasonable doubt that the circumstances are not merely inconsistent with the guilt of the accused but are entirely inconsistent with the innocence. 17 O. W. N. 379; 16 C. L. J. 453, 6 Pot. L. T. 365; 83 I. C. 701; 1925 Pat. 329, 113 I. C. 455; 30 Cr. L. J. 167; 1929 Med. 496.

—the prosecution is to establish its case; failure on the part of the accused to examine any particular witness will not imply the guilt of the accused. 18 O. W. N. 391, 8 W. R. 87, 3 B. H. C. 16.

—when a false charge is made before the M. sanction is required to prosecute under this sec. 14 Bom. L. R. 362; 1 Bom. Cr. C. 125, 34 A. 522.

—but when the complaint is made to the Police no sanction is required. 24 W. R. 41, 25 W. R. 33, 16 P. R. 1870, 14 P. R. 1832, 7 M. 292, 3 O. W. N. 33, 12 O. W. N. 575; 7 C. L. J. 373, 37 C. 250, U. B. R. 134, 1911, 6 L. B. R. 50, 8 L. B. R. 534, 1915.

—when both information to the Police is given and complaint to the court is made on the same allegation and charge and the

S. 211. Trial—*contd.*

complaint are investigated by the court sanction of the court is necessary to prosecute the informant even in respect of the false charge made to the Police. 44 C. 650, 4 Pat. 323; 56 I. C. 825; 1925 Pat. 483; 6 Pat. L. T. 457, 43 C. 115

—before proceedings are instituted under this section opportunity must be given to the accused to prove the truth of his case; where such opportunity is not given the conviction cannot stand. 31 C. W. N. 124; 1937 Cal. 175; 99 I. C. 403; 28 Cr. L. J. 152, *contra*, 7 Pat. 403; 117 I. C. 647; 30 Cr. J. 842; 1929 Pat. 70.

—the complainant should be given a reasonable time and full opportunity to prove his case before sanction is given, 1924 Pat. 138, 5 C. W. N. 106, 33 C. 1, 6 C. 496, 7 C. 87, 208, 8 C. 435, 27 C. 921 and all the witnesses whom the person accused wishes to produce must be heard 6 C. 584, 27 C. 921.

—as a matter of sound judicial discretion a M. should not proceed and direct that the person suspected be tried until some person aggrieved has complained or until he has before him a police report on the subject based on an investigation directed to the offence to be tried and in cases of alleged false charges until it is clear that the original charge has been either heard and dismissed or abandoned. And before the order to prosecute for the false charge is made, the person who made the original charge should be offered an opportunity of supporting or abandoning it. 14 C. 707 F. B. *see also* 30 C. 415, 3 C. W. N. 758, 1 C. W. N. 452.

—the offence under this section is a non-cognizable one, so the Police are not empowered to investigate into a non-cognizable offence on complaint 550; 1925 Mad. 672;

if the police inquiry
complained against
is recorded on oath
33 C. 1.

—except the Calcutta H. C. all other authorities have held that in granting sanction opportunity should be given to the accused of being heard, but the omission to do that will not invalidate the sanction 22 B. 596, 6 C. 582, (1890) Rat. Un Cr. 524, 10 M. 232 F. B., 4 A. 182, 5 A. 36, 8 A. 33, 15 A. 336, 29 A. 587, 30 A. 52, 2 A. W. N. 1, 27 A. W. N. 268, 54 P. L. R. 1918,

—complainant's failure to prove his case is not sufficient to 83 I. C. 701.

complaint as false and
pay compensation to the
re instituted but should

—the accused cannot be tried under this sec. before the disposal of the original proceeding. 4 C. L. J. 88, 3 C. W. N. 758, 1 A. 527, 28 P. R. 1886, 1 M. H. C. 30

—summary proceeding under this sec. is improper. 28 C. 251.

S. 211. Trial—contd.

—the jury shall be asked to say whether the charge was false and whether in instituting that charge there was no just or lawful ground. 1 C. W. N. 301.

Sanction.

—when a false charge has been made only to the police or when the person making the false charge has not applied to the Magistrate and where no proceedings in the court have ensued, no complaint under s. 195 Cr. P. C. is necessary before prosecution under s. 211 I. P. C. 105 I. C. 454; 23 N. L. R. 136; 28 Cr. L. J. 934.

—where a report is made to the police and subsequently a complaint is lodged against a person who launches a counter-charge against the informant under s. 211 I. P. C. and the accused is discharged, the allegation in the two cases being more or less the same no prosecution under s. 211 I. P. C. could be sustained without complaint being first made by the court which tried the case. 53 C. 824; 99 I. C. 118; 1927 Cal. 95; 28 Cr. L. J. 86.

—where an information to the police is followed by a complaint to the court based on the same allegations before the court could take cognizance of an offence under s. 211 in respect of the false charge made to the police, the sanction of complaint of the court itself under s. 195 (1) (b) Cr. P. C. is not necessary. ... and that it was an offence committed in rel
The fact that the complaint was made with intent to cause injury or that it was a false complaint makes no difference. 4 Pat. 323; 86 I. T. 457 (43 C. 1152, 44 C. 650) fol; 30 Cr. L. J. 399; 23 S. L. R. 225.

—sanction for prosecution for a false complaint relying solely on the police report without giving any opportunity to the complainant to prove his case is bad. 8 Pat. L. T. 662; 103 I. C. 63; 28 Cr. L. J. 639; 1927 Pat. 402.

—the mere fact that the complainant has failed to prove his case is by itself not sufficient to sanction a prosecution under this sec. It must be satisfactorily established that the complaint was made with intent to cause injury or that it was a false complaint made with the knowledge of falsity. 6 Pat. L. T. 365; 1925 Pat. 329; 83 I. C. 701; 26 Cr. L. J. 141.

S. 212. (Harbouring offender).

—it is to be proved that the accused has harboured or concealed the offender intending to screen such offender from legal punishment. 12 A. 432, 3 A. 279 F B., 21 P. R. 1867.

—the word "offender" means a person who has contravened the provisions of any criminal law which is punishable either with death, transportation, imprisonment or fine. Where there is neither affirmation nor any circumstantial evidence that the accused knew or had reason to believe that the person he was harbouring was an offender he cannot be punished under s. 212. 1930 A. 33; 121 I. C. 549; 31 Cr. L. J. 288; 1930 Cr. C. 49

S. 212. (Harbouring offender)—*contd.*

—a person is supposed to "know" within the meaning of the sec. where there is a direct appeal to his senses. A person has reason to believe under s. 26 if he has sufficient cause to believe the thing but not otherwise. 1930 All. 33 : 121 I. C. 549 : 31 Cr. L. J. 288 : 1930 Cr. C. 49.

S. 213 (Taking gift &c. to screen from punishment).

—to convict under this sec. the person screened or attempted to be screened must be held guilty of an offence. 37 B. 658 : 15 Bom. L. R. 694 : 2 Bom. Cr. C. 101. Mere suspicion of his having committed an offence will not be sufficient to convict the accused under this sec. 33 C. 420.

—money paid for obtaining release of a person wrongfully confined by a police-officer cannot be regarded as illegal gratification but as money extorted. 4 C. W. N. 755 : 27 C. 925

—to convict under this sec. the facts should prove that there has been an actual compounding of an offence, and there is superadded to it an acceptance of or attempt to obtain or agreement to accept a gratification or restitution as a consideration for the compounding. *Actual concealment, or screening or obstruction from proceeding even for a short time may be sufficient but there must be an arrangement or screening or obstruction from proceeding*
same person subsequently
purge the offence 52 C.
 L. J. 278 1925 Cal. 85,
 r 194 Diss

S. 214. (Offering gift or restoration of property in consideration of screening offender).

—the wording in the sec. presupposes the actual commission of an offence concealed. 14 M. 400, 20 W. R. 66, 15 Bom. L. R. 696 : 37 B. 658 : 20 I. C. 613 : 14 Cr. L. J. 453.

—this section includes the offer of a bribe by the person who has committed the offence which it is desired to screen. 1 Weir 194.

—although the proof of the arrangement must be similar to that of any agreement which parties were free from aware of their respective to a so-called arrange-

—If the offence is compoundable one it is not material whether the accused had the right to compound it. 6 L. B. R. 480.

S. 215. (Taking gift to help to recover stolen property etc.)

—this sec. does not apply to the actual thief but to some one who, being in league with the thief receives property, without at the same time using all the means in his power to cause the thief to be apprehended and convicted of the offence. 23 A. 81

S. 215. (Taking gift to help to recover stolen property etc.)—*contd.*

88 I. C. 353 : 26 Cr. L. J. 1121 : 1925 Lah. 563, 26 M. L. J. 598, 4 L. B. R. 199 F. B., 1914 U. B. R. 43, 26 P. L. R. 303.

—it cannot be a defence to the charge of accepting money for returning stolen property that the person who takes the money is himself the thief. 85 I. C. 225 : 26 Cr. L. J. 481 : 22 A. L. J. 839 : 46 A. 915 : 1924 All. 783, 23 A. 81 *not fol.*

—it cannot be a defence to a charge under this sec. to say that the accused was himself the actual thief of the stolen property. 1928 Sind 168 : 110 I. C. 592 : 29 Cr. L. J. 736.

—if the taker of gratification uses all means in his power to cause the offender to be apprehended and convicted of the offence, the taking of gratification under pretence of helping the person to recover moveable property of which he has been deprived by an offence under the Code is not punishable under this section. 52 C. 151 : 84 I. C. 649 : 40 C. L. J. 278 : 26 Cr. L. J. 345 : 1925 Cal. 85.

—where the accused helped the owner in recovering his horse that had been stolen and there was no evidence connecting the accused with the thief except mere suspicion, under the circumstance the accused could not be punished under s. 215. 25 A. L. J. 866 : 50 A. 186 : 106 I. C. 437 : 1928 All. 22 : 29 Cr. L. J. 21.

—if a person actually takes gratification it must be assumed that he agreed to take and the other to give it in that particular form or shape but where the gratification has not actually passed and there is disagreement, the idea of agreement or consent is negatived. 20 A. 389.

—where the accused proposed to the owner of some stolen buffaloes that if the latter would give him Rs. 200 and promise to take no step against the thieves he would procure the restoration of the stolen cattle but the owner not agreeing to the proposal reported the matter to the police, the accused was rightly convicted of an attempt to commit the offence under s. 215 I. P. C., 45 A. 159 : 20 A. L. J. 927, 20 A. 389 *not fol.*

—to constitute the offence the property must be taken out of the possession of some person by means of an act which is an offence under this Code. 9 P. R. 1915.

—an attempt is a stage in the commitment of the offence which is intermediate between the agreement or consent and the actual taking. 20 A. 389 *contra*, 2 L. B. R. 310.

—where a cattle dealer takes a ransom for the restoration of stolen cattle and fails to restore that property to the owner in spite of the promise, he is guilty of an offence under s. 420 I. P. C. and not of the minor offence under s. 215 I. P. C., 1 Bar. L. J. 179 : 73 I. C. 145 : 24 Cr. L. J. 529 : 1923 Rang. 37.

Total.

—when the question is whether the person who has taken the gratification is the actual thief or not, alternative charges should be framed under s. 236, Cr. P. C., 4 L. B. R. 192.

S. 216. (Harbouring offender who has escaped from custody or whose apprehension has been ordered).

—it is an offence under this sec. to harbour or conceal a person for whose apprehension an order has been passed by a public servant, even when such apprehension is sought to be made not for the purpose of trying him for an offence that he may have committed but for enforcing a punishment, already indicated, on him for having committed the offence. 11 C. L. J. 109.

—to constitute an offence under this sec. it is enough to
 were issued against the person
 actually committed by him. But
 if the harboured person should
 '147-55 M. L. J. 503; 1928 M.
 113 I. C. 545; 30 Cr. L. J. 183.

—an offender may be harboured in the house of a third person by one visiting him. 14 Bom. L. R. 583; 1 Bom. Cr. C. 151.

—the word "punishable" is used to describe particular classes of offence. 11 C. L. J. 109.

—A was convicted under a 224 I. P. C. for escaping from lawful custody. B was convicted under s. 216 for harbouring A. If A is acquitted on appeal B should also be acquitted. 25 W. R. Cr. 1.

—the words "assisting a person in any way" in s. 216 B, are general and include every kind of assistance. 89 I. O. 152; 26 Cr. L. J. 1288; 1925 Oudh. 423, (21 C. W. N. 1062; 26 C. L. J. 141) fol., 25 A. 261 not fol.

—the ways in which assistance may be rendered need not for the purposes of sec. 216 be restricted to methods which may properly be regarded as *ejusdem generis* or of a like nature with supplies of food or of other necessary articles. 21 C. W. N. 1062; 26 C. L. J. 141.

—making a sign to escape from the police is an offence. 2 O. W. N. 260; 12 O. L. J. 270; 89 I. C. 152; 26 Cr. L. J. 88.

—mere giving a meal to a proclaimed offender is not an offence under s. 216 I. P. C. because in the absence of evidence to that effect it cannot be assumed that the intention of the accused who gave food to the offender was to prevent the offender from being apprehended. 6 L. L. J. 481, 84 I. C. 1050; 1925 Lah. 289. 26 Cr. L. J. 410.

—in order to establish an offence under s. 216 I. P. C. it must be proved that the person charged with harbouring a proclaimed offender knew him to be a person for whose apprehension an order had been made by competent authority. 6 L. L. J. 478; 84 I. C. 1055; 26 Cr. L. J. 415; 1925 Lah. 103.

—where the accused was not found to have known that the person he harboured was a proclaimed offender before the search of his house but he denied the fact that he harboured the . . . and gave prevaricating answers evidently with the . . . enabling the offender to evade apprehension, the false replies . . . by the accused were sufficient to bring him within the . . .

S. 216. (Harbouring offender who has escaped from custody or whose apprehension has been ordered)—*contd.*

of s. 216 I. P. C. 11 Lah. L. J. 377, 7 Lah. 30 fol., 1930 Cr. C. 73 : 1930 Lah. 99, 1926 Lah. 206.

—the word "harbour" does not only mean to provide shelter, food and clothing but includes the assisting of a person in any way to evade apprehension. There is no time-limit for the duration of this offence which is complete as soon as it is committed. It is immaterial whether the evasion lasts six hours or six years. 5 Lah. L. J. 329, 73 I. C. 691 : 24 Cr. L. J. 659 : 1923 Lah. 223.

—to constitute the offence under this sec. it is necessary that the person harbouring the offender must do it with the intention of preventing him from being apprehended, there should also be legal warrant for the apprehension of the person harboured. 30 Bom. L. R. 70 : 52 B. 151 : 108 I. C. 27 : 1928 Bom. 184 : 29 Cr. L. J. 317.

S. 216A. (Penalty for harbouring robbers or dacoits).

—where an applicant had lent to some dacoits his pony merely to facilitate them in removing the loot, he could not be convicted under s. 216 A. 22 A. L. J. 496 : 83 I. C. 711 : 1934 All. 676 : 26 Cr. L. J. 151.

... persons
... assisting
... section 11
... general.

S. 216B. (Definition of harbour in ss. 212, 213, 216 A).

—"assisting a person in any way to evade apprehension" means to point out some method *ejusdem generis* with those specified in the earlier portion of the sec. ; they will not for instance, include the assisting of an accused person to escape by merely telling a hero lie to the police as to his whereabouts. 25 A. 261, but the Calcutta H. C. has held that these words are not restricted to methods which may properly be regarded as *ejusdem generis* or of a like nature with supplies of food or of their necessary articles. 21 C. W. N. 1062 : 26 C. L. J. 141, 40 I. C. 731, followed in 83 I. C. 152 : 26 Cr. L. J. 1288, 1925 Oodh 423.

—where a proclaimed offender was found to cook his meals at the house of a zeminder who was present at the time of the arrest, the zeminder was guilty under this sec. 6 A. L. J. 127 (note)

—s. 216-B, lays down that the word "harbour" includes the assisting a person in any way to evade apprehension. A warning approach of the police is an giving false information to to escape. 72 I. C. 949 : 33 : 1926 Lah. 206.

S. 217. (Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture)

—direction of law must be direction to be found in some positive statute or some rules or regulation which are declared by statute to have the force of law. 22 A. W. N. 16, 1 M. 266.

—mistaken belief as to the liability to punishment of the person whom the public officer saves from legal punishment will not help him, 3 C. 412, actual guilt or innocence of the person is immaterial 8 W. R. 68.

—where a police officer apprehending certain persons on suspicion tied them together by the hands and instead of taking them to the nearest Police Station kept them in the village intending to wait until it was convenient to start and the prisoners escaped in the course of the night, the Police officer was not guilty 18 P. R. 1871.

—a Police constable who retains for himself a piece of gold found in a search for stolen property but which is not proved to be a part of the stolen property and fails to report his possession of such property to his superior officers under s. 523 Cr. P. C. he is guilty of an offence under this sec. 16 Cr. L. J. 453 : 29 I. C. 85.

—the accused must knowingly disobey the direction of law with the intention stated in the section. 15 Bom. L. R. 578 : 2 Bom. Cr. C. 90 20 I. C. 601 14 Cr. L. J. 141

—legal punishment does not include departmental punishment. 19 W. R. 40.

—the charge should distinctly state the direction of the law. 2 B. 142

S. 218 (Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture).

—the word "charge" is not restricted to the narrow meaning of "enjoined by special provision of law." 27 C. 144, relied on in 1930 Lab. 159 : 12 Lah. L. J. 5 : 123 I. C. 841 : 31 Cr. L. J. 584 : 1930 Cr. C. 167.

—to constitute the offence the public servant must be charged with the preparation of any record or writing. Public servant fabricating documents which he was in charge of and lost, will not be punished under this sec. 5 A. 55.

—the intention of the offender must be strictly proved, 8 W. R. 27 and it must be relating to the objects mentioned in the sentence 1 Weir 197

—the accused must not be convicted on remote and speculative charge of possibilities, otherwise the most innocent acts might, by the exercise of a little ingenuity, be perverted into the initial steps of great crimes Rat. Up. Cr. 201, 19 W. R. 40.

—the offence is complete if the public servant does the act with intent to save himself from legal punishment. 19 A. 305, 6 A. 42 overruled, 8 A. 653 not fol.

S. 216. (Harbouring offender who has escaped from custody or whose apprehension has been ordered)—*contd.*
of s. 216 I. P. C. 11 Lah. L. J. 377, 7 Lah. 30 fol., 1930 Cr. C. 73 : 1930 Lah. 99, 1926 Lah. 206.

—the word "harbour" does not only mean to provide shelter, food and clothing but includes the assisting of a person in any way to evade apprehension. There is no time-limit for the duration of this offence which is complete as soon as it is committed. It is immaterial whether the evasion lasts six hours or six years. 5 Lah. L. J. 329 : 73 I. C. 691 : 24 Cr. L. J. 659, 1923 Lah. 223.

—to constitute the offence under this sec. it is necessary that the person harbouring the offender must do it with the intention of preventing him from being apprehended, there should also be legal warrant for the apprehension of the person harboured. 30 Bom. L. R. 70 : 52 B. 151 : 108 I. C. 27 : 1928 Bom. 184 : 29 Cr. L. J. 317.

S. 216A. (Penalty for harbouring robbers or dacoits).

—where an applicant had lent to some dacoits his pony merely to facilitate them in removing the loot, he could not be convicted under s. 216 A. 22 A. L. J. 496 : 83 I. C. 711 : 1934 All. 676 : 26 Cr. L. J. 151.

—this section requires that no one should harbour any persons
 facilitating
 : section 11
 in general.

S. 216B. (Definition of harbour in ss. 212, 213, 216 A).

—"assisting a person in any way to evade apprehension" means to point out some method *ejusdem generis* with those specified in the earlier portion of the sec. : they will not for instance, include the assisting of an accused person to escape by merely telling a bare lie to the police as to his whereabouts. 25 A. 261, but the Calcutta H. C. has held that these words are not restricted to methods which may properly be regarded as *ejusdem generis* or of a like nature with supplies of food or of their necessary articles. 21 C. W. N. 1062 : 26 C. L. J. 141 : 40 I. C. 731, followed in 89 I. C. 152 : 26 Cr. L. J. 1288, 1925 Oudh 423.

—where a proclaimed offender was found to cook his meals at the house of a zemindar who was present at the time of the arrest, the zemindar was guilty under this sec. 6 A. L. J. 127 (note)

—s. 216-B, lays down that the word "harbour" includes the assisting a person in any way to evade apprehension. A warning given to a person by the police is not giving false information to him to escape. 72 I. C. 249 : 33 : 1926 Lah. 206.

S. 217. (Public servant disobeying direction of law with intent to save person from punishment or property from forfeiture)

—direction of law must be direction to be found in some positive statute or some rules or regulation which are declared by statute to have the force of law. 22 A. W. N. 16, 1 M. 266.

—mistaken belief as to the liability to punishment of the person whom the public officer saves from legal punishment will not help him, 3 C. 412, actual guilt or innocence of the person is immaterial 8 W. R. 63.

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—a Police constable who retains for himself a piece of gold found in a search for stolen property but which is not proved to be a possession of such he is guilty of 85.

—the accused must knowingly disobey the direction of law with the intention stated in the section. 15 Bom. L. R. 578 2 Bom. Cr. C. 90. 20 I. C. 601 14 Cr. L. J. 441.

—legal punishment does not include departmental punishment. 19 W. R. 40.

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—to constitute the offence the public servant must be charged with the preparation of any record or writing. Public servant fabricating documents which he was in charge of and lost, will not be punished under this sec. 5 A. 55.

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the accused was charged with the intention of saving himself from punishment on remote and speculative innocent acts might, perverted into the initial 1 W. R. 40.

—the offence is complete if the public servant does the act with intent to save himself from legal punishment. 19 A. 305, 6 A. 42 overruled, 8 A. 653 not fol.

S. 218. (Public servant framing incorrect record or writing with intent to save person from punishment or property from forfeiture)—contd.

—it is not necessary that the incorrect document should be submitted to another person or be used by the writer. 13 P. R. 1881.

—where a Police officer in charge of a *thana* destroyed the original report and framed another false report of the commission of a different offence he was convicted under secs. 204 and 218. 20 A. 307.

—where a Head Constable who made a search in the house of a suspect found certain articles which were identified by the complainant, prepared Panchnamas of the search but subsequently suppressed the Panchnamas and prepared statements purporting to have been made by the complainant withdrawing the complaint, he was guilty under this sec. 23 Bom. L. R. 823; 63 I. C. 145; 22 Cal. J. 609.

—in case of *bona fide* mistake in framing the incorrect record the accused is not guilty, but when his conduct is found to be *mala fide* he is guilty. (1911) M. W. N. 44.

—where a Station House Officer in order to support the Inspector made a false entry in his diary he was guilty of framing an incorrect public record intentionally as his *mala fide* was proved by evidence (911) M. W. N. 64.

—legal punishment does not include departmental punishment. 8 W. R. 68.

—one who makes false abstracts from which incorrect records are prepared, is guilty ofabetting the offence. 7 N. W. R. 134.

—actual guilt of the alleged offence is immaterial. Rat. Un. Cr. 405.

—for a conviction under this sec the actual guilt or otherwise of the alleged offender is immaterial. It is sufficient that the commission of a cognizable offence has been brought to the notice of the accused officially and in order to screen the offender he

be incorrect. 86 I. C. 594; 7 L. L. J. 231.

recording statements for conviction. above case.

Record.

—a pay-sheet drawn by a Railway officer setting out certain sum as due by the Railway to certain coolies working in a special gang is a record within the meaning of this sec. 15 Cr. L. J. 502; 24 I. C. 590.

Joinder of charges.

—where a sub-Inspector of Police took charge of a certain property belonging to a deceased person and subsequently returned a large portion thereof to the heirs but misappropriated certain items and destroyed and altered his diary and lists of property in

S. 218. Joinder of charges—*contd.*

order to show that the articles misappropriated were never received and was charged under Ss. 218, 403, 409 and 477 I. P. C., the joinder was not illegal as the charge related to one transaction. 77 I. C. 231 : 25 Cr. L. J. 343.

S. 219. (Public servant in judicial proceeding corruptly making report &c. contrary to law).

—where any person wilfully does an act injurious to another without lawful excuse he does it maliciously. 15 A. L. J. 106.

—proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. 9 B. H. C. 346.

—knowledge that the commitment is contrary to law is a question of fact and it must be inferred from the circumstances of the case. 9 B. H. C. 346.

S. 220. (Commitment for trial or confinement by person having authority who knows that he is acting contrary to law.)

—proof of an unlawful commitment to confinement will not of itself warrant the legal inference of malice. 9 B. H. C. 346.

—where any person wilfully does an act injurious to another without lawful excuse he does it maliciously. 15 A. L. J. 106.

—whether that commitment is contrary to law is a question of fact and it must be inferred from the circumstances of the case. 9 B. H. C. 346.
 guilty knowledge,
 necessary to establish
 s. 220, I. P. C., 10

S. 221. (Intentional omission to apprehend on the part of public servant bound to apprehend)

—to constitute the offence the public servant must be legally bound to apprehend. 3 A. 60.

—where a Police officer while on duty as Sentry allowed a prisoner to escape he was guilty under this sec. 11 P. R. 1874.

—the duties of a chowkidar as a private citizen ought not to be confounded with his duties as a public servant, where the legal obligation of a chowkidar to arrest or detain is not established the chowkidar cannot be penalised for intentionally suffering a pilferer to escape from his detention. 1929 All. 935 : 1929 Cr. C. 663.

S. 222. (Intentional omission to apprehend on the part of public servant bound to apprehend person under sentence or lawfully committed.)

—the meaning of the phrase "intentionally aiding" in the sec. can be learnt from s. 107 Expl. (2). When the accused facilitates an attempt of the prisoner to escape he can be properly convicted under s. 222 and it makes no difference that the attempt was in fact frustrated by other circumstances. 1929 Lah. 631 : 119 I. C. 762 : 30 Cr. L. J. 1103 : 1929 Cr. C. 190.

S. 223. (Escape from confinement or custody negligently suffered by public servant).

—the sec. does not apply to a case of escape of a person under arrest under civil process. 12 C. 190.

—a public servant who is not authorised to take charge of convicted prisoners is not guilty under this sec. for the escape of a prisoner from his custody. 1 Bom. L. R. 349, 29 A. 377, 20 P. R. 1891.

—to constitute the offence, the escape must be due to the negligence of the accused, 7 A. L. J. 907, 6 M. L. T. 247, and not to inefficiency. 15 A. L. J. 883.

—in Ss. 220 to 225 the words "confinement and custody" are co-extensive in meaning. 2 P. R. 1891 F. B.

—where the prisoner was lawfully committed to the custody of the Police under s. 167 Cr. P. C. and the Police negligently suffers the prisoner to escape, he is guilty under this sec. 6 A. 119.

—where a warder negligently allowed the prisoners to go off to a cemetery in order to water trees there and the prisoners escaped, he was guilty under this sec. 11 P. R. 1919.

—"escape from confinement" is not limited to the particular place of confinement. 32 P. R. 1890.

S. 224. (Resistance or obstruction by a person to his lawful apprehension).

—the words in s. 224 I. P. C. "for any such offence" means for any offence with which a person is charged or for which he has been convicted. So that it would be an offence for a man to escape from custody after he had been lawfully arrested on a charge of having committed an offence, although he may not be convicted of such latter offence. 28 C. 253 : 5 C. W. N. 285.

—"charged" is used in the popular sense of the word as implying imputation of an alleged offence which is different from a charge formulated after trial. 29 Bom. L. R. 168 : 9 Bom. Cr. C. 16 : 100 I. C. 988 : 1927 Bom. 96 : 28 Cr. L. J. 390.

—the words "for any such offence" mean for any offence which the accused is charged or of which he has been convicted. *Abore case.*

—the simple evading of arrest does not amount to resistance or illegal obstruction to lawful apprehension. 1 Weir. 205.

—a person arrested must submit to be dealt with according to law. So when a person is legally arrested and subsequently left unguarded and escapes, he is guilty under this sec. 18 M. 401.

—to constitute the offence, manual detention is not necessary. 1 Weir 205.

—escape from the custody of the Police officer who has apprehended the accused for a non-cognizable offence without warrant is not escape from lawful custody and does not constitute an offence under this sec. 24 W. R. 45, 16 A. W. N. 151.

—escape from jail of person imprisoned for failure to furnish security to be of good behaviour is not offence under this sec. 43 A. 185 18 A. L. J. 1036.

S. 224. (resistance or obstruction by a person to his lawful apprehension) confd.

—a person is not in lawful custody when he is apprehended by a person who has no power to arrest, 41 C. 17, 19; M. 310, 21 P. R. 1885, 12 P. R. 1898, 5 M. 22, 23 A. 266, or under a warrant not legally signed, 5 C. W. N. 447, 21 P. R. 1885, 5 P. L. W. 226, 48 I. C. 340, 19 Cr. L. J. 1000; 1918 Pat. 289, or kept in confinement for awarding illegal punishment. 18 M. L. T. 310.

—endorsement in a warrant by initial is sufficient. 5 C. W. N. 447.

—where a sub-Inspector of police who was about to arrest an accused, seeing that a crowd carrying lathis began to assemble, desisted from his intention of arresting the accused, the persons in the crowd could not be said to have caused illegal obstruction. 225, 86 I. C. 350; 26 Cr. L. J.

—under this sec. lawful custody is necessary to be proved. 11 M. 480, 17 M. 103, 14 A. W. N. 176, 4 B. L. T. 261, 4 M. H. C. 152.

—an accused person is not less guilty than a convicted person, if he escapes from lawful custody. 43 C. 1161; 20 C. W. N. 1294, 28 C. 253, 12 Burma. L. R. 248, 3 L. B. 221 but the escape from custody when the detention is not for an offence, 21 C. 337, or is for the purpose of being bound over to keep good behaviour only, 8 C. 331, 7 A. 87, is not an offence under this sec.

—the definition of "obstruction" is not exhaustive, and it is not necessary that the obstruction should be by force or violence.

—the punishment under this sec. being an additional one the trying court must comply with the directions of s. 396 (2), (3), Cr. P. C., 8 W. R. 85, 1 Weir 203.

—a chowkidar cannot be properly regarded as a police officer within the term of sec. 59 Cr. P. C. and escape from his custody is not an offence under s. 224. 41 C. 17; 17 C. W. N. 978, 27 C. 366 *fol.*

S. 225 (Resistance or obstruction to lawful apprehension of another person).

—resistance to illegal apprehension is no offence. 5 L. B. R. 21.

—threatening an excise Sub-Inspector to prevent him from making an arrest amounts to illegal obstruction to lawful apprehension. 1930 Pat. 344; 123 I. C. 68; 31 Cr. L. J. 465.

—"rescuing" is accomplished by the use of a certain amount of criminal force, so a person cannot be convicted of both rescuing and using force. 3 B. L. R. 14.

—it implies intention and use of violence. 19 P. R. 1883.

—the custody must be legal, 35 C. 361, 21 W. R. 22 and should not necessarily be that of a Policemen. 11 M. 441.

S. 225. (Resistance or obstruction to lawful apprehension of another person—contd.)

—but the custodian must be lawfully authorised to detain. 27 C. 366 : 4 C. W. N. 252.

—where a person who was hiding in another's house was arrested by a private person, when some persons rescued him, they were not guilty of an offence under this sec. 89 I. C. 1030 : 26 Cr. L. J. 1462 : 7 Pat. L. T. 65 : 1926 Pat. 53.

—when there is the provision of bail in the warrant, the person arresting must ask the accused whether he can give bail, otherwise his rescue will not constitute an offence. 16 C. W. N. 549.

—but in rescuing a person from illegal custody if more force is used or hurt is caused to the public servant having the custody, the rescuer will be punished under s. 353, 5 P. L. W. 226.

—the custody of the agent of a person lawfully authorised to arrest is lawful custody. 23 A. 266.

—an arrest made in execution of a warrant bearing no seal of the court is an illegal warrant and arrest under it is not legal. 42 C. 708.

—rescuing a person from the custody of a private person who had assisted him at the time of stealing, 11 M. 471 or from the custody of a chowkidar to whom he was handed over by a private person, 29 A. 575, or by a police officer, 6 C. W. N. 337 is an offence under this sec.

—it is no offence for a person to escape from custody after he had been lawfully arrested on a charge of having committed an offence although he may not be convicted of such latter offence. 43 C. 1161 : 20 C. W. N. 1294.

—when a Tahsildar issued a warrant under s. 146 of the United Provinces Land Revenue Act against certain defaulting co-sharers and they were arrested but subsequently escaped from detention, this was an escape from lawful custody within s. 225 I. P. C., 32 A. 116 : 9 A. L. J. 21.

—if a person after committing a non-bailable and cognizable offence escapes, but on being arrested by a private person who did not actually see him commit the offence, resists and obstructs him, he is not guilty of an offence under s. 226 I. P. C., 19 P. L. R. 1922 : 1922 Lah. 73 : 64 I. C. 371 : 23 Cr. L. J. 3.

—joint trials of offence under s. 129 of the Railway Act (for placing loads on line) and s. 225 I. P. C. (for rescuing from lawful custody) is illegal. 29 C. 385.

—when a woman had been arrested in pursuance of a warrant but the accused rescued her and tore up the warrant and it was found that the warrant had not been properly issued, the accused was guilty of an offence under s. 352 I. P. C. but not under sec. 225 or 225-B, I. P. C. 20 A. L. J. 921.

—where a woman had been arrested in pursuance of a warrant but the accused rescued her and tore up the warrant and it was found that the warrant had not been properly issued held that the accused was guilty of an offence under s. 352 but not under s. 225 I. P. C. 45 A. 142 : 71 I. C. 503 : 24 Cr. L. J. 151.

S. 225 B. (Resistance or obstruction to lawful apprehension or escape or rescue, in cases not otherwise provided for).

—if the warrant is not legal no offence is committed. 38 C.
789. 3 P. L. J. 106, 20 P. W. R. 1813.

—resistance or obstruction to the apprehension of a person is punishable only if the apprehension was lawful, 9 Lah. 424, 107 I. C. 601 : 29 Cr. L. J. 265 : 1928 Lah. 332, and when the resistance to arrest is intentional, 1928 Lah. 324 : 107 I. C. 772 : 29 Cr. L. J. 286.

—issue of warrant upon a witness at the first instance without the previous service of summons and without recording reasons for the same, is illegal and resistance to the execution of such warrant is not an offence under this sec. 39 C. 789: 15 C. W. N. 1001: 15 C. L. J 185, overruled by 27 C W N. 857. F. B.

—serving of arrest is not an offence under this sec. 29 U. B.
R. 49 P. C. 1 Weir 205.

—the substance of the warrant must be notified, otherwise the arrest is not legal. 26 C. 748, 23 C. 896, 5 C. W. N. 843, 14 A. L. J. 731, 16 C. W. N. 519.

—it is not necessary that a bailiff executing a civil court warrant should in the first instance show the warrant. It is sufficient that he should apprise the person to be arrested of the contents of the warrant and show it if desired. 25 C. W. N. 815 : 66 I. O. 1008 : 23 Cr. L. J. 347, 5 C. W. N. 843, 14 A. L. J. 731.

age, it must be shown
on that behalf. 6 C.
that such authority
C. L. J. 331.

the seal of the court is
arrest under a warrant
illegal and a conviction
7 A. 506 P. C., 9 Lah.
Lah. 832; 30 Punj. L. R.

660.

—a warrant bearing a wrong description is illegal, 28 C. 399.
so also an warrant issued by an incompetent person. 27 C. 457.

—when a warrant does not contain the name of the person who was to be apprehended thereunder except in a heading where he was described as party to a suit which was non-existent, the warrant is bad and obstruction to the arrest is not an offence. 39 C. L. J. 452 : 51 C 902 : 83 I. C. 481 : 1924 Cal. 959, 66 I. C. 1003 : 23 Cr. L. J. 347.

—warrant of arrest in execution of a money decree not addressed to the bailiff of the Court is illegal. 16 P. R. 1904.

* —resistance to search under a defective warrant is not an offence under this sec. 16 P. R. 1913.

—rescuing the prisoner arrested under a defective warrant not an offence under this sec. 45 A. 142: 73 I. C. 503: 1923 All. 24 Cr. L. J. 151.

S. 225 B. (Resistance or obstruction to lawful apprehension or escape or rescue, in cases not otherwise provided for)—*contd.*

—escape from confinement for failure to furnish security to be of good behaviour is punishable under this sec. 43 A. 185: 18 A. L. J. 1039

—escape when the prisoner is asleep is also punishable under this sec. because a man cannot gain his liberty before he is delivered by due course of law. 31 M. 271: 18 M. L. J. 540.

—the custody must be legal. 4 L. B. R. 103, 35 C. 361, 21 W. R. 22.

—where a warrant was issued for the search of a house of a particular person to find out a woman alleged to be unlawfully detained and she was not found in that house but was found in a field and was rescued from the police custody, there was no rescuing from lawful custody. 1928 Pat 550: 113 578: 30 Cr. L. J. 175: 11 Pat. L. T. 31.

—an arrest by oral declaration is not a legal arrest and consequently a person so arrested cannot be committed under s. 225-B, I. P. C. 113 I. C. 288: 30 Cr. L. J. 128.

—escaping from an unauthorised arrest is not an offence under this sec. 89 I. C. 400: 26 Cr. L. J. 1360: 1925 Lah. 623.

—the offence is committed when the escape is effected with the consent of the custodian on a promise either to pay off the decretal amount or to surrender into the custody again. (1919) M. W. N. 695: 25 M. L. T. 290, 18 M. 401, 31 M. 271.

—in a charge of escaping from lawful custody under s. 225, B. the prosecution must first establish that the constable who arrested the man had power to act under the specific authority that he claimed to have. 47 M. 442: 46 M. L. J. 417: 34 M. L. T. 95.

—an arrest cannot be said to be unlawful because the provisions of s. 80 Cr. P. C. were not complied with as a Police officer may justify his action under s. 46 (c) Cr. P. C. Where a person attempts to rescue the person arrested he is liable to be convicted under s. 225-B, I. P. C. 53 C. 831: 49 O. L. J. 264: 33 C. W. N. 284: 116 I. C. 723: 1929 Cal. 174: 30 Cr. L. J. 703.

—omission to secure the door of the room where the prisoner is confined is an indication of "negligence." 1930 Pat. 103: 1930 Cr. C. 79.

—obstruction to the lawful apprehension of a boy under 7 years of age by a police for theft is not an offence under this section as under s. 82 I. P. C. a child of that age cannot commit an offence. (1915) M. W. N. 543: 30 I. C. 154: 16 Cr. L. J. 602.

—under the Land Revenue Act. (U. P. Act III of 1901) ss. 142, 143 and 146, a defaulter of revenue may be detained in prison and escape from such detention is punishable under this sec. 32 A. 116.

—resistance to an arrest by a chowkidar acting under the Village Chowkidari Act is an offence under this sec. 10 C. W. N. 25, but see 27 C. 366.

S. 225 B. (Resistance or obstruction to lawful apprehension or escape or rescue, in cases not otherwise provided for)—*contd.*

—in order to constitute an offence under s. 225-B, something more is required than evasion of arrest or a mere assertion by the person sought to be arrested that he would not like to be arrested or a fight would be the result of the arrest. There must be positive evidence to show that the officer armed with a warrant of arrest produced the warrant and that the person sought to be arrested resisted such arrest. 38 A. 506: 14 A. L. J. 731: 35 I. C. 973: 17 Cr. L. J. 413

—there must be an overt act of resistance or obstruction, some active opposition by show of force. 1 Rang. 218: 74 I. C. 960: 24 Cr. L. J. 848

—the correct procedure to be adopted by a civil court desirous of prosecuting a person who has escaped from the lawful custody of a servant of the court is that the latter should file a complaint in the ordinary way. A civil court is not empowered to leave a judgment-debtor in custody of a peon after giving him time to pay up a decretal amount and such detention is not lawful custody under the I. P. C., 86 I. C. 501: 23 A. L. J. 189: 1925 All. 318: 26 Cr. L. J. 865.

—if a person against whom proceedings under s. 109 Cr. P. C. are pending abscondes from police custody, he commits an offence under s. 225-B 77 I. C. 814: 25 Cr. L. J. 462: 1925 Sind 193.

—when a constable arrests a man alleging to act under sec. 54 Cr. P. C. under which he is not justified to arrest, escapes from custody is not punishable under s. 225-B, on the pleading that the constable had power to effect that arrest under some other provision such as under s. 55 (c) Cr. P. C. 47 M. 412: 46 M. L. J. 447: 81 I. C. 51: 25 Cr. L. J. 563.

—where the accused who was arrested by a process-server was released by a number of his friends but he subsequently surrendered on the next morning, held that the accused having gone away when rescued by his friends was guilty of escaping from lawful custody. 2 Bur. L. J. 19: 72 I. C. 67: 24 Cr. L. J. 307.

S. 226. (Unlawful return from transportation).

—escape from custody whilst on the way to undergo sentence of transportation is not punishable under this sec. 4 M. H. C. R. 152.

S. 227. (Violation of condition of remission of punishment.)

—a person convicted by the Records' Court of Prince of Wales Island, Singapore and Malacca, of the crime of burglary, years, at a place to be in Council, was released after having been in He committed theft at sentence had expired, held

S. 230. (Coin defined)—contd.

—Murshidabad rupees stand on the same footing as Farukhabad rupees. 28 A. 62, 23 A. W. N. 115, 1 P. R. 1903.

S. 231. (Counterfeiting coin).

—to constitute the offence a counterfeit coin should not be made with the primary intention of its being passed as genuine. It is sufficient if the resemblance be so close as to be capable of being passed as genuine one. 30 A. 93, 4 P. L. J. 525, *but see* 26 P. R. 1868, 9 P. R. 1884.

—counterfeiting a coin of the Emperor of Persia is no offence.

—fraudulent representation to an ignorant person of a medal as being money is not an offence under this sec. 1 Weir 219.

S. 232 (Counterfeit of Queen's coin).

—deception practised for show only is not an offence. 26 P. R. 1868.

—intention to practise deceptions by means of the imitation is sufficient to constitute the offence. 4 P. R. 1899.

—when coins are counterfeited only for the purpose of passing them secretly into the hands of the enemy in order to put him into trouble, the accused is punishable under s. 195 and not under this sec. or sec. 235. 17 P. W. R. 1911, 43 P. L. R. 1912.

—removal of the ring from a coin used to form a part of a necklace and working up the face of the coin where the ring had been, is no offence. 23 A. 420.

—possession of instruments and materials for counterfeiting coins being part and parcel of the transaction of counterfeiting coin, one punishment is to be inflicted, 14 P. R. 1904, and no separate sentence under Ss. 232 and 235 can be passed. 5 Lab. L. J. 272; 72 I. C. 700; 24 Cr. L. J. 236; 1924 Lab. 78.

S. 235: (Possession of instrument or material for the purpose of using the same for counterfeiting coin).

—the mere physical relation arising from the possession of the object does not constitute possession under this sec. The possession contemplated by this sec. is not that which has ever been voluntary and for the purpose of bringing home to any person the voluntary possession of any object the mere proof of a fact of which he knows nothing would be valueless. 6 Bom. L. R. 887, 6 B. 731 *fol.*

—the possession must be proved to be within the accused's knowledge. 8 B. L. T. 131.

—when several persons are found in a room where false coins are being made, they are all presumed to be in possession of the instruments or materials lying there. 17 P. W. R. 1912; 1 Weir 219, 11 I. C. 242, *contra.* 7 P. L. R. 1904.

S. 235. (Possession of instrument or material for the purpose of using the same for counterfeiting coin)—contd.

—where the evidence was that the father looked after the family cultivation while the son exclusively attended to the shop, in the verandah of which the moulds and coins were found and it was also proved that the father was never seen in possession of them, the ordinary presumption that the things in the house of a joint Hindu family were in the possession and under the control of the managing member had been rebutted. 4 P. L. J. 525; (1919) Pet. 220; 51 I. C. 263; 20 Cr. L. J. 439, 15 A. 129.

—the accused must be proved to be in possession of the instruments and materials 7 P. L. R. 1904.

—where the accused being pursued throws off the instruments of counterfeiting coin, he is guilty under this section. 10 P. R. 1892

—instruments and materials which can be used for the purpose of counterfeiting coins as well as for other purposes, are to be considered as instruments and materials used for the purpose of counterfeiting coins. 17 P. W. R. 1912.

—mere possession of instruments and materials capable of counterfeiting coins is not offence. To constitute an offence under s. 235 possession of such instruments should be with the intention

—when a person is being convicted for being in possession of instruments or materials or counterfeiting coins it is not right to convict him separately for being in possession of various parts of such instruments. 1930 Lah. 51; 31 Cr. L. J. 527; 123 I. C. 525; 1930 Cr. O. 19.

—a lenient sentence should not be passed for an offence under this section. 100 I. C. 529; 28 Cr. L. J. 305; 1927 Lah. 220, *contra*. An exemplary sentence should be given. 1930 Lah. 51; 123 I. C. 525; 31 Cr. L. J. 527; 1930 Cr. C. 19.

S. 239. (Delivery of coin possessed with knowledge that it is counterfeit.)

—it must be counterfeit of a coin used for the time being as money; otherwise the offence will be that of cheating and not of uttering false coin. 29 A. 141.

—the accused must have guilty knowledge of the spuriousness of the coin at the time of receiving possession of it. 23 W. R. 4. 1 Weir 222.

—this sec. refers to a person who procures or detains or receives counterfeit coin. 3 N. W. P. 150.

—evidence of possession and the attempted disposal of coins of unusual kind is relevant on a charge of uttering such coins. 8 B. 223.

—it is necessary to prove that at the time the accused became possessed of the coin himself or through his wife, clerk or servant he knew it to be counterfeit. 44 C. 477; 21 O. W. N. 33; 28 C. L. J. 400 F. B.

S. 240. (Delivery of Queen's coin possessed with knowledge that it is counterfeit).

—sec. 240 covers 243; so a person having in his possession four counterfeit coins and being convicted under sec. 240 for uttering some coins cannot be punished again under s. 243 for having possession of the remaining coins. Rat. Un Cr. 202, 1884.

—all that is required is the accused's guilty knowledge of the spuriousness of the coins at the time of receiving them. 23 W. R. 4, 1 Weir 222

—it is necessary to prove that at the time the accused became possessed of the coin he knew it to be counterfeit whether he was in possession of the coin himself or through his wife, clerk or servant. 44 C. 477; 21 C. W. N. 33; 28 C. L. J. 400 F. B.

—where there was no evidence as to whether at the time he became possessed of the counterfeit coin the accused knew them to be counterfeit, he could not be convicted under sec. 243 or 240 I. P. C. but could only be convicted under sec. 241 I. P. C. 31 P. L. R. 235; 124 I. C. 388; 31 Cr. L. J. 736.

S. 241. (Delivery of coin as genuine which, when first possessed, the deliverer did not know to be counterfeit)

—if the coin is not intended by the utterer to pass as a genuine coin, he commits no offence. 4 N. W. P. 62.

—when a coin is tendered for change and is refused on the ground that it is false, tender of the same coin to another person constitutes an offence under this section as it may be presumed that after the first refusal the accused knew the coin to be bad. 12 Cr. L. J. 79.

S. 243. (Possession of queen's coin by person who knows it to be counterfeit when he becomes possessed thereof).

—it is necessary to prove that at the time the accused became possessed of the coin he knew it to be counterfeit whether he was in possession of the coin himself or through his wife, clerk or servant. 44 C. 477; 21 C. W. N. 33; 28 C. L. J. 400 F. B.

—counterfeiting Queen's coins.—Possession of instruments and counterfeit coins.—voluntary possession. 6 Bom. L. R. 887, 5 Lah. L. J. 272; 71 I. C. 700; 24 Cr. L. J. 236.

S. 251. (Delivery of Queen's coin possessed with knowledge that it is altered).

—when a person clips and cuts away a coin and makes up the deficit weight by solder and delivers it to a bank, he is guilty of fraudulently defacing a coin although the coin had been previously used as a wearing ornament. 48 A. 603; 93 I. C. 154; 1926 All. 321; 27 Cr. L. J. 426.

—this section does not require both fine and imprisonment to be inflicted, the sentence of fine is optional. 1 Weir 223.

S. 260. (Using a genuine Government stamp known to be counterfeit).

—selling a stamp at a higher value is not an offence under this sec. 2 W. R. 65.

S. 262. (Using Government stamp known to have been before used).

—the mere affixing a used stamp to a letter does not prove fraud or intent to cause loss to Government (1881). 1 A. W. N. 56.

—If a person used a postal stamp twice he will be punished under this sec. 5 O. P. L. R. 43, Rat. Un. Cr. 145, 1880.

S. 264. (Fraudulent use of false instrument for weighing)

—the weight of the grain that a measure is found to hold is no evidence of its capacity, as compared with that of another measure unless the very same grain is used. Rat. Un. Cr. 989.

—in the absence of fraud or falsity of measure, the use of unstamped measures does not constitute any offence. 1 Weir 223.

—to constitute an offence under this sec. the "false" weight or measure must be a prescribed one. 36 Cr. Rul. 1888.

—there must be a complaint by the purchaser. 38 P. W. R. 1902.

—intention is an essential part of the offence under s. 264 I. P. O. 18 W. R. Cr. 7.

—a one tola below weight in a five seers weight does not establish an intention to defraud. 3 A. W. N. 224.

S. 265. (Fraudulent use of false weight or measure).

—the prosecution must prove that the accused knew the measure to be incorrect when he got it or that before he used it he tampered with it. 1929 Nag. 239; 30 Cr. L. J. 692; 116 I. O. 671; 1229 Cr. C. 263.

—the weight of a grain that a measure is found to hold is no evidence of its capacity, as compared with that of another measure, unless the very same grain is used. Rat. Un. Cr. 989.

—a difference of tola in a five seer weight may be left out of consideration as it only represents a fair wear and tear. 3 A. W. N. 224.

—it is the duty of the seller to see that weights he uses are not defective. 1 Weir 223, 225.

—where one sells liquor measuring it with a glass which was not of prescribed measure, he would more appropriately have been tried for the offence of cheating. 1888 Rat. Cr. C. 386.

S. 266. (Being in possession of false weight or measure).

—the mere possession of false weights is not punishable; knowledge and intention must be proved. 1 D. H. C. 181, 36 Cr. Rul. 1890, 15 A. L. J. 897.

—It is the duty of the seller to see that the weights he uses are not defective. 1 Weir 223, 225.

S. 285. (Being in possession of false weight or measure)—*contd.*

—when no standard weight is prescribed there can be no presumption of fraud. U. B. R. 1903, 17 P. C., 38 P. W. R. 1908.

—standard weight or measures should be compared with and

S. 288. (Public nuisance).

—every omission causing nuisance is not an offence unless it is illegal. 6 M. 280, 6 W. R. 71, 1 Weir 244, 11 P. R. 1875.

—generally the occupier and the owner of the house is liable for the nuisance. 46 C. 515; 22 C. W. N. 1062; 29 C. L. J. 262.

—in India the question is merely how the statute should be construed and the English cases are no authority on the construction of the Penal Code. 46 C. 515; 22 C. W. N. 1062; 29 C. L. J. 262.

—fouling the water is public nuisance. Rat. Un. Cr. 203.

—throwing dust and sweeping on the road making the atmosphere noxious to health is public nuisance. 1 Weir 242.

A. 11 C. 112.

—where there is no common injury, danger or annoyance to the public, there is no public nuisance. 22 A. 113, 2 N. W. P. 349, 20 C. 120, 10 M. 173, 10 C. 120, 10 P. R. 1883, 12 A.

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—the act of one creed may be offensive to the sentiments of other creeds, but that is not public nuisance. 7 M. 590, 3 P. R. 1883, 10 A. 44.

—every person has the right to enjoy his property as he may think fit without causing injury to others or without
against the law even though he may thereby hurt the suscepti-
of others. 30 A. 181.

S. 268. (Public nuisance)—*contd.*

—the mere act of gambling is not public nuisance. 7 C. W. N. 710, 1 Weir 240, *contra*. 7 B. H. C. Cr. 74, 16 P. R. 1867, 14 M. 364, 1 Weir 239, 242.

—placing cowdung cakes by the side of public road to dry is not nuisance. Cr. Rul. 42, 1886: Rat. Un. Cr. 297.

—soliciting passers-by on public road for the purposes of prostitution 22 A. 113. committing bare solicitation of chastity. Cr. Rul. 28, 1895; Rat. Un. Cr. 761, 2 N. W. P. 349, placing a cot temporarily on a public road, 10 A. L. J. 362, are not public nuisance.

—cremation in particular place dedicated for the purpose in a usual manner is not public nuisance, 19 M. 464, but the owner of a private cremation ground may be liable for a nuisance if the cremation is so performed as to annoy or endanger the lives and property of the neighbourhood. 25 C. 425.

—keeping cows for religious purpose or persons to whom it is offensive Cr. Rul. 13, 1897; Rat. Un. Cr.

—skinning an animal which had died a natural death was not a public nuisance. 12 A. L. J. 349.

—letting loose cattle at the night on a public road, 1 Weir 239, obstructing the passage of a tidal navigable river by placing bamboo stockades across it for the purpose of fishing, 14 C. 656, 20 C. 665, are public nuisance.

—the public are entitled to use every inch of a road that has been dedicated to the public, so if a portion, however small, of a public road is encroached upon, it may cause obstruction to persons who may have occasion to use the highway. 86 I. C. 1006: 1925 Lah. 454; 26 Cr. L. J. 942; 26 Punj L. R. 127, 20 C. 665 *Diss*, 14 C. 656 and 20 M. 433, *fol.*

—no prescriptive right can be acquired to commit nuisance. 7 B. L. R. 499.

—there cannot be a prescriptive right to use another's land as latrine. 19 C. W. N. 864.

—long possession or enjoyment of what is said to be a nuisance may give rise to the character of a *bona fide* dispute as to title ousting the jurisdiction of the M. under s. 133 and 137 Cr. P. C. and making the subject a question of civil dispute. 25 C. 278.

—where the user of a premise gives rise to a nuisance, the occupier for the time being and not the proprietor is guilty of nuisance. 22 C. W. N. 1062; 29 C. L. J. 262.

—any individual may complain provided he is interfered with

on is not illegal on the ground have not previously been taken.

1900.

—either civil or criminal action may be taken against a public nuisance. 1 B. H. C. I.

S. 269. (Negligent act likely to spread infection or disease dangerous to life).

—traveling by train after being attacked with cholera is an offence under this sec. 7 M. 276.

—travelling by train after coming in contact with a plague patient is an offence under this sec. 22 P. R. 1902, 12 M. L. T. 664.

—violation of the order of the M. nr. of the Health Officer to remove a patient of small pox to the Hospital is no offence. 1 O. W. N. 274, 24 C. 494, 26 M. L. T. 386.

—a prostitute who was suffering from syphilis encouraged several intercourse with a person whom she had assured that she was healthy, held that she was not guilty under this sec. but under sec. 417 or 420. 11 B. 59.

—a person who was directed by the Health Officer acting under a. 366 Madras City Municipal Act to remove his son to an isolated hospital, removed him to an isolated house, he was not guilty under a. 269 I. P. C. 43 M. 344; 26 M. L. T. 386; 53 I. C. 689; 20 Cr. L. J. 785; 38 M. L. J. 80, 24 C. 404 *fol.*

S. 272. (Adulteration of food or drink intended for sale.)

—the sale of adulterated food which is not noxious is no offence under this section though it may constitute the offence of cheating or an offence under the Municipal Act. 3 C. W. N. 66.

—adulteration with harmless ingredients for the purpose of making more profit is not an offence under this sec. 1 L. B. R. 153.

—to sell inferior food is not offence unless it is shown to be noxious. 15 P. R. 1873

—toddy in which germs have germinated is noxious 1 Weir 228.

—a person who mixes pig's fat with ghee, intending to sell the mixture as good or knowing it to be likely that it will be sold as such, cannot for so doing be convicted of the offence under this section. 46 A. 94; 83 I. C. 1004; 26 Cr. L. J. 220; 21 A. L. J. 875, 1924 All. 214.

—the expression "noxious as food" means unwholesome as food or injurious to health and not repugnant to one's feelings. *above case.*

—where vegetable oil is mixed with ghee no offence under this section is committed though it is punishable under the Ghee Adulteration Act. 12 C. W. N. 608; 7 Cr. L. J. 405.

S. 273. (Sale of noxious food or drink).

—this sec. is more comprehensive than s. 272. 1 Weir 228.

—the sale of horse's food of grain or fodder, unfit for horse to eat, is not an offence 139 P. L. R. 608, 1908.

—sale of grain in bulk in a closed pit is no offence under this sec. 28 A. 312; A. W. N. 1906, 3 A. L. J. 840; 3 Cr. L. J. 208.

—"noxious" means harmful to health or unwholesome which must be proved before conviction for adulteration of ghee w vegetable oil. 12 O. W. N. 608; 7 Cr. L. J. 405.

S. 273. (Sale of noxious food or drink)—contd.

—the articles which the accused has sold or exposed for sale must be shown to be noxious to his knowledge or belief. 26 A. 337: A. W. N. 1904, 56: 1 A. L. J. 64: 1 Cr. L. J. 210.

—mixing of water with milk does not make the milk noxious. 1 Weir 228.

—offering or exposure of toddy in which worms have generated is an offence, *above case*.

—selling wheat containing a large admixture of extraneous matter is not punishable under this sec. 6 Bom. L. R. 520: 1 Cr. L. J. 618, nor the selling of inferior food cheap. 15 P. R. 873.

—the sale of adulterated articles of food as pure is not an offence under this sec. though it may amount to cheating. 3 C. W. N. 66.

—sale of milk mixed with water is not an offence under this sec. as the mixture is not noxious or injurious as food or drink 89 I. C. 961: 26 Cr. L. J. 1441: 1926 Leb. 49.

—the prosecution must prove that the accused had knowledge or reason to believe that the article sold was noxious as food or drink just as it must prove any other ingredient of the offence. There is no warrant in law for the prosecution of such knowledge. 77 I. C. 1001: 25 Cr. L. J. 537: 1922 All. 273.

S. 277. (Fouling water of public spring or reservoir).

—"corrupts or fouls" must be taken in its literal and not artificial sense, 13 C. P. R. 92, 7 M. 590, 12 B. 437, the expression means some act which defiles or fouls the water. 2 Bom. L. R. 1078.

—the water of a *nallah* does not constitute a public spring. Rat Un Cr. 963: Cr. Rul. 17 of 1898.

—"public spring" does not include a continuous stream of water running along the bed of a river. 4 M. 229: 1 Weir. 230, a river is not a public spring, 2 C. 283: Ret. Un. Cr. 14: Cr. Rul. 27, nor the water of a rivulet. Rat. Un. Cr. 215.

—cultivating paddy in the bed of a tank used by the public for drinking purposes, 1 Weir. 229, fishing with basket-nets in a tank causing a slight disturbance of the mud. Weir 231, angling in a tank using bait of a foul kind, 1 Weir 231, spitting into a public well, 13 N. L. R. 68 are offences under this section, but for bathing purposes, 1 Weir 228, in a continuous spring, 6 Bom. L. R. 1078, 13
water by a woman or man of low
or well, 2 Bom. L. R. 1078 13

S. 278. (Making atmosphere noxious to health).

—the act of performing the offices of nature in front of one's door-step in a public street is not an offence under this sec. Rat. Un. Cr. 200, but allowing a large stock of bones to remain uncovered in the open for a long time so as to become rotten and to emit smell

S. 278. (Making atmosphere noxious to health)—confd.

noxious to people is a public nuisance. 34 C. 73:5 C. L. J. 40:5 Cr. L. J. 45.

—this sec. applies to public nuisance and not a private nuisance. Where the accused threw the skull of a deceased man into a private house and there was nothing to show that the effect of it was to make the atmosphere noxious, he could not be convicted under s. 278 I. P. C. 1929 Pat. 113:116 L. C. 48:10 Pat. L. T. 87:30 Cr. L. J. 556.

S. 279. (Rash driving on a public way.)

—the court can take into consideration the probability of person using the road being placed in danger 19 B. 715, actual hurt to human being need not be proved. 2 P. W. R. 1912, 6 M. H. C. Ap. 33

—driving cart-hullock without nose-string is no offence. Rat. Un. Cr. 19.

—the accused driving on a wrong side must satisfy that he was not rash or negligent. 23 Bom. L. R. 358, 379.

—rashness or negligence on the part of the rider or driver must be proved and it cannot be inferred from the fact of a person falling from a horse. 1 W. 222 the foot passenger also should be proved. R. 112. Where a boy was injured by the accused he was not

the owner of it is liable for

—rash driving causing injury to the horses of another carriage is punishable. 13 P. R. 1900.

—the imputability arises from the neglect of the civil duty or circumsppection 7 M. H. C. 119, 4 C. 764.

—an accused convicted under this sec. cannot be convicted under s. 427 for mischief 5 S. L. R. 263:13 Cr. L. J. 536:15 Ind C. 808.

—if the accused is convicted under ss. 337 and 304 I. P. C. he cannot be convicted separately under sec. 279 I. P. C. 1929 M. W. N. 395.

—where there is a special statute the punishment should be under that statute. 8 Bom. L. R. 414.

—the facts to be proved under s. 279 I. P. C. and the Motor Vehicles Act. s. 5 are substantially the same; there can be no question of prejudice to the accused whether the conviction is under the one or the other. 88 I. C. 998:1925 All. 798:26 Cr. L. J. 1254:23 Cr. L. J. 790.

—where the accused seeing another car approaching him in addition to the one passing in his direction tries to force his way on, such conduct comes within s. 5 of the Motor Vehicles Act. 88 I. C. 998:1925 All. 798:26 Cr. L. J. 1254:23 A. L. J. 790.

—where a person who was driving a car on the wrong side of the road at a sharp corner entering into a crowded thoroughfare

S. 279. (Rash driving on a public way)—*contd.*

collided with a motor-cycle and caused danger to it, imperilling the life of the rider, he was punishable under s. 279 I. P. C., 16 S. L. R. 147; 84 I. C. 253; 26 Cr. L. J. 253.

—If there is no danger to the public outside the car who were using the road no offence under s. 279 I. P. C. can be said to have been committed but if hurt is caused to the occupants of the car by the rash and negligent driving offence under sec. 337 I. P. C. is committed. 30 Cr. L. J. 1077; 119 I. C. 536.

—a second class Magistrate who has convicted an accused under this section can order his release after due admonition under s. 563 (1-A) Cr. P. C. 47 A. 353; 85 I. C. 848; 1925 All. 644.

S. 280. (Rash navigation of vessel).

—It must be proved that the immediate cause of the accident was the rash navigation of the vessel of the navigator, in conjunction of contributory negligence. N. 835; 14 C. L. J. 656;

... ely slovenly manner does
... C. unless it endangered
... injury to other persons or
1925 Sind. 284.

—the fact that a launch runs into a cargo boat at anchor is in itself *prima facie* evidence of negligence. 4 Bur. L. T. 140; 12 Cr. L. J. 582; 12 Ind. C. 846.

—a boat contractor was not liable to be punished in case of the boat being upset for want of sufficient ballast. Rat. Un. Cr. 35.

S. 282. (Conveying person by water for hire in unsafe or overloaded vessel).

—a person plying a ferry boat out of order and having crack is liable for the drowning of passengers. 1 B. H. C. 137.

—a ferrymen was punishable for the drowning of passengers by the sinking of a boat which was not an old one with some holes over which plaques had been nailed. 11 W. R. 3.

S. 283 (Danger or obstruction in public way or line of navigation).

—a public right of way is unconnected with any dominant tenement, it can be acquired only by user or by dedication to the public.

... evidence was not sufficient to support an inference of dedication
... sh a contrary right
... 283 or 339 I. P. C.
... re remedy lies to

S. 283. (Danger or obstruction in public way or line of navigation)—*contd.*

—this sec. refers to parties causing danger, obstruction or injury to any person in any public way. 7 W. L. 31.

—the public are entitled to the use of the full width of the public street however wide it may be. 20 M. 433.

—no obstruction to any particular person need be proved, 38 M. 305, 1920 P. L. T. 564, *contra* 4 M. 235, 20 M. 433, 14 C. 656, 20 C. 665, 25 C. 275, 11 C. L. R. 462, 7 Barma L. R. 125, 1 Weir 232.

—exposing goods for sale by the accused in a rented hut encroaching upon a thoroughfare is not an offence under this sec. 8 C. W. N. 369: 1 C. L. J. 244.

—allowing prickly-pear fence to extend over a part of the public road is an offence. 1888 Weir 140.

—exhibition of clock-work-toys in a shop-window causing a crowd outside was under the circumstances held to be an offence. 35 B 368: 13 Bom. L. R. 209: 12 Cr. L. J. 258: 10 Ind. C. 804.

—an accused cannot be convicted under s. 283 I. P. C. merely because he drove his bullock cart on a road in spite of prohibitory order by the Dt. M. when it is not made out that by so doing he obstructed that road and caused danger or injury to any person using that road. 81 I. C. 195: 25 Cr. L. J. 707: 1925 Leh. 153.

—liability of owner in case of obstruction in public road by contractor. 76 I. C. 975: 25 Cr. L. J. 303.

S. 284. (Negligent conduct with respect to dangerous substance).

—to constitute an offence under this sec. it is not necessary that the negligent omission should be followed by any disastrous consequences. 16 P. R. 1882

—a Sergeant in the Police who did not take precaution to guard against misuse of poison was punished under the sec. 16 P. R. 1882.

—the owner of a house in which fire breaks out cannot be convicted under this section without proving actual carelessness or illegal omission in him. L. B. R. 1872-1892, 134, 569.

—there must be evidence of rashness or negligence of the accused L. B. R. 1872-1892, 337, 1 U. B. R. 1902-1903 P. C., 7 L. B. R. 1872-1892 411.

—danger to human life need not be proved; it is sufficient to prove likelihood of injury to property. Rat. Un Cr. 134, 5 B. H. C. 67.

S. 286 (Negligent conduct with respect to explosive substance.)

—where the danger which actually occurred was not such a probable result as that the accused could be held responsible, he was not guilty. 8 M. 421 : 1 Weir 233.

—a revolver is not an explosive substance within the meaning of this sec. 1 Weir 235.

—causing of hurt by negligence in the use of a gun falls within sec. 337 and not this sec. 28 A. 464 : A. W. N. 1905 ; 3 A. L. J. 332 : 3 Cr. L. J. 363.

—the first part of the sec. is not confined to cases where the explosive is in the possession of the accused at the time of the injury. 1 Weir 236.

—when the owner of a machinery employs a competent man to work it and leaves him unfettered he cannot be held criminally responsible for any accident due to the errors of the employee. 8 P. R. 1906, 112 P. L. R. 1907 : 4 Cr. L. J. 279.

S. 287 (Negligent conduct with respect to machinery.)

—this sec. speaks of "any probable danger" and not "any possible danger" and so the owner is not required to provide perfect security against every possibility of danger, however remote. He is only to take reasonable precaution and so much care as is sufficient to guard against such danger as can be expected within the bounds of probability. 1930 Pat. 507 : 1930 Cr. C. 935

—where two girls playing near a flour mill were caught in the belting, one being killed and the other crippled, held that the

—when the owner of a machinery compels his servants to work it in an unsafe condition knowing to be so, in a manner likely to endanger human life he is criminally liable. The fact that he has employed competent man to look after the machinery
 a. But if he employs a competent
 he cannot be held criminally
 errors of his employee. 1906
 7 : 1930 Lab. 453.

S. 289 (Negligent conduct with respect to animals).

—the offence under this sec. consists of a knowing or negligent omission and not merely of an omission. 5 W. R. 8. It must be established that the accused knowingly or negligently omitted to take sufficient order. 1 A. L. J. 605 ; 1 Cr. L. J. 1059.

—It does not refer to savage animals alone, but even to a pony. 19 W. R. 1.

S. 289. (Negligent conduct with respect to animals)—contd.

—some evidence must be given of the existence of an animal
 [Weir 238, known to the

the animal must be known to be
 kept. S. J. L. C. 353, 1 Weir.

at large in accordance with
 general practice. 87 P. L. R. 1904: 5 P. R. 1904, 1 Cr. L. J. 501.

—where the accused's buffalo attacked the complainant's
 buffalo and broke its leg the accused could not be punished. Rat.
 Un. Cr. 197, but where the buffalo which injured a person was
 known to be dangerous the owner and herdsman were held guilty,
 27 P. R. 60, where the buffalo was known to be of savage

leaving a harnessed horse in
 the hands of a bull let loose and
 which has become vicious, is punishable, 32 P. R. 1883, but a
 Hindu who has set at large, in accordance with the religious usage
 a bull which has subsequently become dangerous is not punishable,
 5 P. R. 905.

—escape of the bullock is not the proof of negligence. Un
 Cr. 606, 1 Weir 287, 1 A. L. J. 605.

—when the accused was negligent in the keeping of his dog
 and the animal bit the complainant, he should be convicted under
 S. 289 and not under S. 323 I. P. C. 81 I. C. 53: 25 Cr. L. J. 565:
 2 Bur. L. J. 8.

S. 290. (Punishment for public nuisance in cases not otherwise provided for).

—Charges of the Municipality cannot be punished under
 so simple. 5 B. H.
 may be rigorous.
 5 M. 157.

—under this sec. it must be proved that injury, danger or
 annoyance has been caused either in regard to the enjoyment of
 property or the exercise of a public right on the part of a portion
 of the community or any particular class of people. 9 W. R. Cr. 70.

—annoyance to the particular religious sect is not public
 nuisance but private one. 12 B. 437, 7 M. 590

—the annoyance caused to a few residents of a single house
 cannot be said to be an annoyance to the people in general residing
 cannot constitute a public nuisance.
 C. 1113.

—bamboo stockade across tidal-
 offence under s. 268 I. P. C. if not
 is punishable under s. 290 I. P. C.

—in order to constitute an offence under s. 290 it is not
 necessary that the alleged nuisance should be emotionally injurious

S. 290. (Punishment for public nuisance in cases not otherwise provided for)—contd.

to health. It is sufficient if it be offensive to the senses. 5 C. L. J. 40.

—where the user of premises gives rise to a nuisance, the person liable is the occupier for the time being, whoever he may be, and the proprietor, if not living in the premises, might be liable for abatement. 46 C. 515: 22 C. W. N. 1062: 29 C. L. J. 262.

—a person wilfully slaughtering cattle in a public street, so that the slaughter could be heard and seen by the passers-by, would commit an offence punishable under s. 290 I. P. C. 10 A. 44.

—an encroachment by a private individual building over a portion of a public street is a public nuisance within the meaning of sec. 268 I. P. C. and is punishable under s. 290 whether any particular individual was actually injured or obstructed by the act or not. 7 M. L. J. 95, 20 M. 433.

—the construction of a projection however small over a public road is an offence under this s. 86 I. C. 1006: 26 Cr. L. J. 942: 1925 Lah. 454, 6 Lah. 203.

... g is a continuous
... it yet it may be an
... act was such as
... Bom. L. R. 52.

—the lessee of a house who permitted disorderly people to use it for gambling, and thereby caused annoyance to the public was convicted of an offence under s. 290 I. P. C. 14 M. 364.

—omission of a person to keep his poles from straying is not a public nuisance punishable under s. 290 I. P. C. 6 W. R. Cr. 71.

—gambling in a private house is not an offence under this sec. 1 Weir 240, but in market place is. 1 Weir 242.

—gambling is not an offence under s. 268 I. P. C. So gambling at a place where the Gambling Act is not in force is not punishable under s. 290 I. P. C. 7 C. W. N. 710.

—skinning of an animal which dies a natural death does not in itself constitute a public nuisance. 12 A. L. J. 347.

—a prostitute visiting a dak-bungalow at the request of a person staying there but causing no annoyance to other lodgers is not liable to be convicted under s. 290 I. P. C. 2 N. W. P. 349

—omission to fence a well or private ground within 8 yards of the highway and open to it is not punishable as public nuisance. 6 M. 280.

—placing a charpoy temporarily on the road in a bazar, without any intention of obstructing the traffic, does not amount to an offence of causing public nuisance. 10 A. L. J. 362.

—sale of satta tickets in the shop and consequent collection of purchaser outside obstructing the public street adjoining the shop do not constitute an offence under s. 290 I. P. C., 1929 Lab. 801. 1929 Cr. O. 368.

S. 290. (Punishment for public nuisance in cases not otherwise provided for)—contd.

... is liable to make use of his premises in such a way as to cause a public nuisance. C. is obviously more guilty than the other persons who form the crowd. 22 A. L. J. 662

... in default of the committing a public 45 contra. rigorous

—where the user of premises gives rise to the nuisance, the person liable is the occupier for the time being, whoever he may be. The proprietor if not living in the premises, might be liable for abetment. 29 C. L. J. 262 46 C. 515: 22 C. W. N. 1062.

—a joint owner of property is responsible in law for the nuisance caused by allowing prickly pear to spread from that property on to the public road 1928 Mad 1235: 55 M. L. J. 715 28 L. W. 621.

—a person constructing a projection however small over a public road is guilty of an offence under s. 290 I. P. C. 26 P. L. R. 127: 86 I. C. 1006: 6 Lah. 203, 20 M. 433 *for*

—if a crowd collects and obstructs the traffic in front of a shop so as to cause a nuisance, the person who is directly responsible for the collection is abettor not less but more guilty than the person who is the owner of the shop and this would equally be the case if the person who is the owner of the shop is the person who is the owner of the premises at the precise spot. 83 I. C. 693.

... of his premises in such a way as to interfere with the rights of the public. *above case*.

S. 291. (Continuance of nuisance after injunction to discontinue.)

—strict proof of all the circumstances constituting an offence is required Rat. Un. Cr. 295: Cr. Rul. 39 of 1866.

—it must be proved that the accused had on some previous occasion committed the particular nuisance and had been personally enjoined not to repeat or continue it. 8 A. 99.

—a previous conviction and an injunction must be proved. 20 W. R. 55.

—trial of 14 persons together charged with distinct offences under Ss 290 and 291 I. P. C. is an irregularity calculated to prejudice the accused. 5 M 20.

—where a person has been proceeded under s. 291 I. P. C. for flagrant disobedience to an order of the Court to discontinue a nuisance and committed the same again, he is liable to be punished with imprisonment for life or for any term not exceeding ten years.

S. 292. (Sale &c., of obscene books &c)

—If a publication is detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of people it will be obscene. The question whether a publication is or is not obscene is a question of fact. It is no defence to a charge that the intention of the accused was innocent. 28 A. 100. A. W. N. 1905, 203; 2 Cr. L. J. 520, 39 C 377; 15 C. L. J. 151; 13 Cr. L. J. 177; 13 Ind. C. 993 *Fol.*, 20 B. 103, 3 A. 837 *Ref.*, 15 B. L. R. 307; 2 Bom. Cr. C. 58; 19 Ind. C. 504; 14 Cr. L. J. 248, 32 C. 247, 20 B. 193, 22 Bom. L. R. 166, 22 M. L. T. 169.

—a religious book such as *Natu Churi* was not an obscene book within the meaning of this sec. 39 C. 377. 15 Cr. L. J. 151; 13 Ind. C. 993. 13 Cr. L. J. 177.

—an advertisement relating to a book which contained coloured pictures of male and female child in the womb does not fall within the purview of a 292 I. P. C. 1925 Pat. 549; 29 Cr. L. J. 773; 110 I. C. 805.

—if the prosecution succeeds in shewing that the detailed passage on which they rely are of an obscene character, the author can escape by reference to other passages of the book which may contain moral precepts of an unexceptional character. 15 Bom L. R. 307; 2 Bom. Cr. C. 58; 14 Cr. L. J. 143; 19 Ind C. 504, 25 P. R. 1917.

—It is no justification that the matter published is written by an eminent writer or is composed in a style not easily understood by all, 22 M. L. T. 169, or that it relates to medicine and is sold to registered subscribers only. 25 P. R. 1917.

—the charge should always specify the word or representation alleged to be obscene. L. B. R. 1872-1892, 252.

S. 293. (Having in possession obscene book etc., for sale or exhibition).

—in interpreting the word "obsceno" in ss 292 and 293 I. P. C the courts may rightly follow *Reg. vs. Hicklin* (L. R. 3 Q. B. 360) where Lord Cockburn C. J. says, "I think the test of obscenity is this whether the tendency of matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral influences and into whose hands a publication of this sort may fall. It is a question of fact." 20 B. 193.

—a book may be obscene within the meaning of the I. P. C. although it contains only a single obscene passage. Good intention is no defence. The intention of the seller and the distributor must be gathered from the character of the matter contained in the book. 3 A. 837.

S. 294. (Obscene acts and songs).

—the particular song must be proved to be obscene. 4 B. H. C. 25

—annoyance to others is essential to constitute the offence. L. B. R. 1872-1892, 332, 537.

S. 294. (Obscene acts and songs)—*confd.*

—obscene act in a public place and exposing one's person to insult a woman constitute one offence. 1 L. B. R. 52.

—the sentence should not be severe. L. B. R. 1872-1892, 309, 537.

—omission to set out the word in the evidence is not a ground for setting aside the conviction. 1 Weir 251.

—a clear and specific allegation of the words and of the persons by whom they were uttered must be stated. L. B. R. 1893-1900, 50, 1 C 356 *Fol.*

—a sentence of three months' rigorous imprisonment for an offence under s. 294 I. P. C. is unduly severe. 2 Bur. L. J. 98 : 1923 Rang 253.

—the Burma Village Act has conferred on the village headman the power to try, as a court, offence under s. 294 I. P. C. and other offence. 1 Rang. 449. 2 Bur. L. J. 149 : 1924 Rang 23

S. 294 A. (Keeping lottery office).

—to constitute the offence (1) there must be a lottery, (2) there must be a drawing of any ticket, lot, number or figure, (3) there must be a publication of the proposal to pay any money or to do something for the benefit of any person. The actual drawing of lots is an essential element of the offence, the word "drawing" being used in its fiscal sense. 30 Bom. L. R. 1426 : 1928 Bom. 550 : 53 Bom. 57 : 112 1 C 777 : 30 Cr. L. J. 9.

—a fund constituted a lottery when it depended entirely on the drawing of lot whether or not the prize fell to any given subscriber. 1 Weir 251.

—keeping a lottery office held out to the public as the place where the lottery would be drawn and receiving monies would be punishable under s. 294-A, I. P. C. 16 L. W. 757.

—the fact of the fund being registered does not exonerate the person carrying on the business from liability. 1 Weir 252, 15 Cr. L. J. 243 23 Ind. C. 195.

—scheme for distributing prizes &c. of the particular description was held to be a lottery. 14 P. W. R. 1910 Cr. : 17 P. R. 1910 : 92 P. L. R. 1910 : 11 Cr. L. J. 382 : 6 Ind. C. 620.

—a Chit Fund is not a lottery. 48 M. 661 : 1925 Mad 870 : 90 I. C. 420 : 1925 M. W. N 685.

—the words "any such lottery" in this sec. mean any lottery not authorised by Govt. 10 B. 97.

—members of the committee of a club who exercise full control over club matters, inclusive of the premises "keep" the premises of the club. 7 L. B. R. 319.

—it is not necessary that the place should be kept solely for the purpose of drawing a lottery. 9 B. L. T. 124, 7 L. B. R. 319, 17 P. R. 1910.

—a "lottery" is a game of chance. 1 M. H. C. 448, 95 I. C. 313 : 27 Cr. L. J. 777 : 1926 Sind. 213.

S. 294 A. (Keeping lottery office)—contd.

—cl. (1) of sec. 294-A applies to cases in which it is shown that the accused did keep an office where they carried on the necessary preliminary work for running a lottery and received the lottery moneys and which they held out to the public as the place where the lottery would finally be drawn. 44 M. L. J. 595; 32 M. L. T. 340; 69 I. C. 272; 23 Cr. L. J. 688.

—an agreement is not illegal under sec. 294-A whereby a number of persons subscribe, each a certain sum, by periodical instalments, with the object that each in his turn (to be decided by lot), shall take the whole subscription for each instalment. 29 M. 212; 21 L. W. 403.

—delivery of the ticket books of a lottery with a view to the tickets being sold to others is sufficient publication to convict the accused under the latter part of s. 294-A. I. P. C. 1930 Lah. 81; 1930 Cr. C. 97, 1926 Sind 213; 95 I. C. 313; 27 Cr. L. J. 777 Dist.

—the publication of the terms of circular for the sale of tickets for prizes on horses winning at the Derby races is an offence under the 2nd para of this sec. It is not necessary that the payment proposed to be made should be made by the person advertising. 27 Bom. L. R. 363; 1925 B. 243; 87 I. C. 516; 26 Cr. L. J. 980.

—a mere publication of a hand-bill stating that tickets in an unauthorised lottery can be had at a particular place is no offence under para 2 of sec. 294-A I. P. C. since it does not constitute a
any event or contingency
ticket in any lottery not
I. C. 1006; 7 Bom. Cr.

in includes immovable
I. 4; 1926 M. W. N. 949;
1927 Mad. 66. 51 M. L. J. 685.

S. 295. (Injuring or defiling place of worship with intent to insult the religion of any class).

—"defile" is not to be restricted to acts that would make an object of worship unclean as a material object, but it extends to acts done in relation to the object of worship which would render such object materially or ritually impure. 1 Weir 253, 256, 41 M 980.

—the word "defile" cannot be confined to the idea of making dirty but must also be extended to ceremonial pollution. 41 M. 980; 24 M. L. T. 181; 47 I. C. 812.

—the presence of Moothans, or sub-castes of Sudras, whose status is equal to, if not higher than that of Nairs, in such portions of the Hindu temples as are open to non-Brahmins is not a "defilement" within s 295 I. P. C. 41 M. 980.

—"destroy" and "damages" have obviously a physical or material signification. 1 U. B. R. 199.

—it makes no difference that the guilty party is a worshipper of the temple which he has defiled. 1 Weir 256.

S. 295. (Injuring or defiling place of worship with intent to insult the religion of any class)—*contd.*

—throwing a basket containing cooked food, into a well, as a result of a quarrel, but without any intention to wound the religious susceptibilities of any one, is not an offence under this sec. Rat. Un. Cr. 979 · Cr. Rul 40 of 1893.

—there must be an intention to insult the religion of a class of persons, or the knowledge that a class of persons is likely to consider the defilement as an insult to their religion. 7 C. P. L. R. Cr. 45, 23 Cr L. J. 426. 3 L. L. J. 247 : 67 I. C. 586.

—"object" does not include animal object but refers only to human beings, etc. 10 A. 150 F. B., 1884 overruled, 8 A. 51, A. L. J. 147.

and other articles before the execution of a decree for possession by civil court was held to be punishable under this sec 1 Weir 430 2 Weir 577

—where a band of Mahamadans entered a Hindu temple and damaged property therein they were guilty under Ss. 295 and 447 I. P. C. but the offence being really one the sentences passed should be concurrent and not consecutive 82 I. C 37 25 Cr L. J. 1173 : 1925 Oudh 50.

—where by custom, an untouchable by entering an enclosure round a Hindu Shrine would pollute the temple, and with that knowledge an untouchable deliberately enters a temple and defiles it, he commits an offence under s 295. 76 I. C 299 : 25 Cr. L. J. 155 : 1924 Nag 121

—where in a village a Sikh killed some fowls by a process

J. 314, F B.

S 296. (Disturbing religious assembly).

—to constitute "disturbance" stoppage or actual prevention of the carrying on of religious assembly or procession 1 Weir 259.

procession to the performance of worship or ceremonies ; if the ceremony is commenced by act not lawful this sec. will not apply. 23 C. 60, 7 A 461, 474 F. B.

—the object of the sec. is to secure freedom from molestation when people meet for the performance of religious duties let spot vested in them they engage as a thorough-going is altogether

S. 296. (Disturbing religious assembly)—contd.

P. W. R. 1909 : 10 Cr. L. J. 445 : 3 Ind. C. 981, but where certain Lodhae who with the sanction of the public authorities, had been carrying flags to a temple in procession through a public street, were attacked, it constituted a disturbance within this sec. 34 A. 78 : 8 A. L. J. 1150 : 12 Cr. L. J. 373 : 12 Ind. C. 837.

—the worship must be real and not a cloak for doing something else. 23 C. 60

—so long as persons are Mohamedans they are entitled to enter a mosque and perform the worship and say the word "Amin" without anything to restrain their tone or note of the octave, but if the pronouncing of the word results in a disturbance of the peace that will have to be dealt with under the criminal law. 12 A. 49 : A. W. N. 1890, 179 F. B., 35 C. 294 : 12 C. W. N. 289 : 7 C. L. J. 433. *Rel. on.* 18 C. 448 : 18 I. A. 59 P. C., 35 M. 681, 15 P. R. 1902 : 104 P. L. R. 1902, 18 Ind. C. 195.

—any person who goes into a mosque *mala fide* for the purpose of disturbing others engaged in their devotions, will render himself criminally liable. 19 A. 419 F. B.

—disturbance caused by music is punishable. 34 M. 92.

—it is not necessary for the purpose of sec. 290 I. P. C. that the accused should have an active intention to disturb religious worship. 34 M. 92.

—s. 296 applies to the disturbance of an assembly engaged in worship in a public thoroughfare. 3 Mys. L. J. 77.

—where the accused spread false rumours which caused religious procession to come to an end, they could not be convicted of causing disturbance within the sec. 17 A. L. J. 820 : 20 Cr. L. J. 421 : 51 I. O. 197.

S. 297. (Trespassing on burial place &c.)

—this sec. applies where there is a trespass into a place of religious worship with the knowledge that the feeling of the persons would be wounded thereby. *Rat. Un. Cr.* 148.

—using a Mahamedan tomb as a place of privacy for adulterous intercourse is an offence under this sec. 5 C. P. L. R. 32.

—having sexual connection in a mosque is an offence under this sec. 45 A. 52 : 21 A. L. J. 455 : 1924 All. 9 : 73 I. C. 935 : 24 Cr. L. J. 911.

—persons who enter a burial place as a graveyard are guilty under 119, 34 M. 927, 33 A. 773 : 8 A. L. J. 9 if they be joint owners. 8 A. L. J. 9
But opening a saw-pit close to them is no offence. 3 M. 178.

—delaying the digging of grave is not an offence under this sec. 1 Weir 287, 226 P. R. 1887, nor the utterance of the words, "do not cremate the body" is an offence. 2 P. R. 1919.

—for the purpose of this sec. a burial ground should not be in use, and the term 'trespass' in this sec. means any violent or

S. 297. (Trespassing on burial place, &c.)—contd.

injurious act committed in such place and with such knowledge and intention as defined. 17 C. W. N. 531. 40 C. 548 18 Ind. C. 677: 14 Cr. L. J. 117, 23 P. R. 1915 Cr. 18 A. 395.

—the word 'trespass' in sec 297 1 P. C. has not the same meaning as is attached to 'criminal trespass' in s. 441 1. P. C. 1915 P. W. R. 40 30 I. C. 731: 16 Cr. L. J. 683

—the word 'trespass' in this sec. means any injury or offence done and it should not be coupled with entry upon property. 45 A. 52. 21 A. L. J. 455: 73 I. C. 935. 24 Cr. L. J. 911

—'trespass' as a legal term means an unjustifiable intrusion upon property in possession of another. 56 I. C. 235: 21 Cr. L. J. 443.

—obstruction to the performance of obsequies comes under this sec. 6 M. 254 but a *Maharrom* procession is not a funeral ceremony. 5 A W N 49.

—where the accused who was a trustee of a mosque entered the mosque for prayer and being provoked into a quarrel abused all and sundry and employed obscene epithets, conviction under s. 297 could not stand, but it could be altered to one under s. 504 I. P. C. The offence under s. 504 is a cognate offence and there is no legal bar to an alteration of the finding 81 I. C. 41. 25 Cr. L. J. 553: 1924 Rang. 106

—where as a result of political difference, the complainant boycotted, and obstacles were put in the way of burying his son but no violence was actually used no offence under the law was committed. 20 A. L. J. 93: 1922 All. 184: 23 Cr. L. J. 73. 65 I. C. 424.

—Magistrate's own opinion after local inspection is no evidence in a trial under this sec. 1 Pat. L. R. 256 1923 P. 537.

—where the petitioner merely told the complainant and his relatives who were preparing to cremate the body of a deceased relation of theirs "not to cremate the body" held that the mere utterance of the words, unaccompanied by any attempt to prevent the cremation, or by any manifestation on the part of the petitioner of their intention to interfere, if the complainant and his relations should persist in having the body cremated, was not a disturbance to the persons assembled for the performance of the funeral ceremonies within s. 297. 44 P. L. R. 1919. 49 I. C. 337: 20 Cr. L. J. 145

S. 298. (Uttering words &c. with deliberate intent to wound religious feelings).

—calling out in the hearing of the dialog party that they would be eating cow flesh if they took food which made them leave their dishes untouched is not an offence under this sec. Rat. Uo. Cr. 592, so also the throwing down of a shoe amongst those present at a cast dinner, is no offence. 24 A. 155.

—throwing the cloth by a woman upon the alleged father of an illegitimate child which she had been wearing during confinement is not punishable under this sec. 6 C. P. L. R. 7.

S. 298. (Uttering words &c. with deliberate intent to wound religious feelings)—*contd.*

—interpolation of a forbidden chant in an authorised ritual is held to be an offence under this sec. 2 M. L. J. 236

—the intention to wound the religious feelings must be deliberate. 4 P. R. 1820.

Ss. 299-300. (Culpable homicide, murder).

Distinction between culpable homicide not amounting to murder and murder.

—all murder is culpable homicide but all culpable homicide is not murder; thus sec 299 covers a wider ground than s 300, U. B. R. 1897-1901 vol. 1, 282.

—causing death by doing an act with the knowledge that it is likely to cause death is culpable homicide under s. 299 and causing death by an act known to be imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death, is murder under s. 300 Cl. (4), 106 I. C. 433; 29 Cr L J 17: 1928 Pat. 169; 9 Pat. L. T. 286; 7 Pat. 638, 8 C P. R. Cr. 9, L. B. R. 1893-1900 112, 5 W. R. 48 F. B.

—the distinction between murder and culpable homicide not amounting to murder is a question of degree of probability and depends principally on the nature of the act and on the way it is

3, 7 S. L. R. 29; 14 Cr.

L. J. 17: 1928 Pat.

Pat. L. T. 286.

300 is, only an amplification of an act done with

the intention of causing such bodily injury as is likely to cause death. 18 P. R. 1893 Cr., 17 P. R. 1898 F. B.

—to render a culpable homicide a murder, the case must come within Cls 1 to 3 or 4 of s 300 8 W. R. 47, 51 F. B.

—where the evidence in a case leaves room for doubt as to whether the accused has committed murder or culpable homicide not amounting to murder, the benefit of that doubt should be given to the accused. 1927 M. W. N. 796

—it is not permissible for a Judge to sentence a prisoner to transportation for life on the ground that he is sufficiently certain of the guilt for that purpose but not sufficiently certain to sentence him to death. A feeling of doubt as to the guilt of the accused is to be considered before the verdict but not after. It has no place in the determination of the sentence after conviction. If the evidence is not strong enough to justify an irrevocable sentence the accused must be acquitted. 1930 Pat. 247; 9 Pat. 474; 11 Pat. L. T. 148; 1930 Cr. C. 515, 1930 Pat. 252; 124 I. C. 811; 1930 Cr. C. 520. 11 Pat. L. T. 166.

What constitutes the offence.

—before conviction of murder can be obtained the court must be satisfied that the person alleged to have been murdered is actually dead. Where the court is unable to arrive at the con-

Ss. 299-300. What constitutes the offence—*contd.*

clusion that the victim is dead or it is exceedingly unlikely that he is alive the court cannot uphold the conviction for murder. 81 I. C. 436 : 22 A. L. J. 340 : 25 Cr. L. J. 900 : 1924 All. 662.

—without any of the elements mentioned in the sec. an act causing death will not amount to culpable homicide. Rat. Un. Cr. 6

—where the intended victim who was administered poison survived but two others died after eating the portion thrown off, the accused was guilty of murder. 22 M. L. J. 333 : 1912 M. W. N. 136 : 11 M. L. T. 127 : 13 Cr. L. J. 145 : 13 Ind. C. 833.

—death caused by the ill-treatment of a woman for the purpose of extorting confession and by subsequent neglect amounts to culpable homicide. U. B. R. 1897-1901 vol. 1, 285

—the presumption of law is that a man intends the natural and inevitable consequences of his own acts. 62 P. R. 1887.

—where death is caused by an extraordinary intervening circumstance, no presumption of intention or knowledge can be said to arise. 1 Weir 300, (1864) W. R. (gap no) 31

—intention is a matter of fact. 1 Weir 300, 33 P. R. 1894.

—acting under a sudden impulse without exercising due care and caution constitutes the offence. 18 A. W. N. 163.

—one who deals a violent blow on the head must be deemed to have intended to cause such bodily injury as he knows was likely to cause death. 26 Punj. L. R. 363.

—death caused — homicide, 42 M. 547 ;
W. R. 41, 3 W. R. 55, 1
103, 41 A. 686, 29 A. 2
194, 18 C. W. N. 1279, 17 A. L. J. 56.

—common intention of joint assistant must be proved. 29 A. 282.

—In a case of murder and
the fact of death is estab- con-
lition it is a suitable cas two
penalties. 23 A. L. J. 821 : 1925.
All. 627

—the discovery of the dead body is not a material circumstance. The absence of the body is a circumstance which makes it necessary to proceed with the greatest care and caution, and sentences of death should not be passed unless one feels completely satisfied about it. If any doubt renders a judge in the least degree uneasy the proper course is not to change the nature of the sentence from death to transportation for life but to acquit the accused altogether. 89 I. C. 903 : 23 A. L. J. 821 : 29 Cr. L. J. 1431 : 1925 All. 627 F. B.

—where the accused saw the deceased unexpectedly and forthwith forming the design of hitting him in return for the beating which he had received on the previous day, struck him only one blow which resulted in his death later, held that it would be unsafe

Ss. 299-300. What constitutes the offence—*contd.*

to hold that the accused intended to do more than cause grievous hurt to the deceased and a conviction under s. 325 was proper. 25 P. L. R. 430: 88 I. C. 256: 26 Cr. L. J. 1188: 1925 Lah. 359.

—where the Civil Surgeon and the Sub-Assistant Surgeon were unable to say what poison was actually administered and there was no evidence on the record to show what poison had been administered, held that the evidence on the record was quite insufficient to establish the charge. 85 I. C. 817: 26 Cr. L. J. 593: 1923 Lah. 325.

—it is necessary to prove motive when there is clear evidence that a person has committed the offence. 7 Lah. L. J. 59: 85 I. C. 406: 26 Cr. L. J. 774: 1925 Lah. 328.

—from absence of motive for murder existence of a powerful and irresistible influence of homicidal tendency cannot be safely inferred. 112 I. C. 222: 29 Cr. L. J. 1006.

—no motive for the crime is to be proved. It is sufficient if it is established that the crime was committed. But when the prosecution puts forward a substantive case as to the motive for the crime evidence regarding motive should be considered in judging the probability of the case. Failure to prove motive however does not outweigh the positive evidence as to the crime. 41 C. L. J. 35: 1925 Cal. 525: 86 I. C. 433: 26 Cr. L. J. 805.

—in a charge of murder it is wholly immaterial that the motive is inadequate. 100 I. C. 226: 28 Cr. L. J. 258.

—organised fights, each side being armed with lathis are grave infractions of the law and frequently result in the death of one or more combatants, the introduction of pistol aggravates the crime and transportation for life is the only appropriate sentence to the combatant who uses the fire-arm and brings down a man to the ground wounded though not dead. 87 I. C. 597: 1925 All. 661: 26 Cr. L. J. 997.

—the word 'knowledge' in s. 300 Cl. (2) I. P. C. imports certainty and not mere probability. 106 I. C. 433: 29 Cr. L. J. 17: 7 Pat. 638: 1925 Pat. 169: 9 Pat. L. T. 285

Cases of culpable homicide not amounting to murder.

—a person committing house breaking at night and striking the inmates with a dangerous weapon widely, not intending to cause death but death resulting, is guilty of culpable homicide not amounting to murder. 12 P. R. 1911: 41 P. W. R. 1911: 12 Cr. L. J. 391: 12 Ind. C. 957.

—where the husband made a violent attack on the wife causing extravasation of blood on the brain resulting in her death, the accused was only guilty of culpable homicide not amounting to murder as there was no intention to cause death. 1 B. 342. (U. B. R. 1906: 5 Cr. L. J. 325. 14 Cr. L. J. 459. 1 N. L. R. 130. Ref. A. W. N. 1891, 105.

—in case of brutal wife murder the Court should impose the extreme penalty untrammelled by any consideration of mercy. The Legislature has wisely thought fit not to entrust judicial

Sa. 299-300. Cases of culpable homicide not amounting to murder—contd

tribunals with the prerogative of mercy. The Judges are to administer law not as they wish it might be but as they find it. 1930 Pat 247: 11 Pat L. T 149 1930 Cr. C. 515: 9 Pat. 474.

—it is dangerous and immoral to concede to any jealous husband the right to assassinate his wife and escape the gallows. Where the reason alleged for the murder of the wife when she was asleep was that the accused wanted to save his family from dishonour there was no valid reason for not passing the extreme penalty. 1930 Pat 247: 1930 Cr. C. 515: 9 Pat 474: 11 Pat. L. T. 148.

—where a man killed his wife by a single blow, 5 P. R. 1893, where the husband and father of a woman laid in wait for the person who enticed her away and hit him with stick on the back and chest which effected death, 10 P. R. 1890, where a thief was severely beaten and died in consequence, 5 N. W. P. 235, where a person struck three blows with a lath fracturing the bones and the wounded person died in consequence, 42 A. 301, where a person not having skilful hand emasculated a person and caused his death 5 W. R 7, where a snake-charmer in exhibiting his skill, caused a person to be bitten by a snake, 5 C. 351, 12 W. R 7, where the wife squeezed the testicles of the husband causing death, 19 M. 356, the offence was culpable homicide amounting to murder.

—paramour's presence in wife's house at midnight was a grave and sudden provocation sufficient to deprive the appellant of his power of self-control and the accused's act in killing his wife and her paramour was in such circumstances culpable homicide not amounting to murder. 6 L. L. J. 437: 85 I. C. 374: 1925 Lab. 114: 26 Pooj L. R. 260, 7 P. R 1890 Cr. Dist.

—where the wife being upbraided by her husband for her misconduct replied that she would continue to lead an immoral life when the husband chastised her on which she struggled with him and he in the process of the struggle stabbed her to death, the offence amounted to murder, the case P. C. 83 I. C. 844: 1925 All.

—where the accused saw the deceased in his house at midnight taking liberties with his sister whereupon he beat him to death, held that the accused had grave and sudden provocation and that he was guilty of culpable homicide not amounting to murder. 5 L. L. J. 40: 1924 Lab. 62, 94 I. C. 140: 27 Cr. L. J 572: 1925 Lab. 485.

—where the deceased the wife of the accused called him "a pig, son of pig" and they were of low caste, held that such abuse could not constitute grave provocation specially in the case of low caste persons. But the provocation which would justify the punishment was not sufficient to justify the punishment. But the provocation which would justify the punishment was not sufficient to justify the punishment.

Ss. 299-300. Cases of culpable homicide not amounting to murder—contd.

—mere abuse of the accused by the deceased cannot be said to be such grave and sudden provocation as to bring it under Exception 1. 27 Punj L. R. 15.

—where the accused on the impulse of the moment struck his sister-in-law on her head with a lump of limestone and she died in consequence the accused having no intention of killing her or of fracturing her skull, the offence is one of culpable homicide and not murder. 81 I. C. 320; 25 Cr. L. J. 800.

—if an assault cannot be prevented by anything short of killing the assailant then the right of private defence is not exceeded. 66 I. C. 665; 23 Cr. L. J. 313.

—culpable homicide is not murder unless the act by which the death is caused is done with the intention stated in one or more of the four clauses to be interpreted in the light of the four illustrations appended to it, one for each clause. 75 I. C. 689; 1923 Lah. 317.

—where five persons armed with dangs attacked another and
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I. C. 333; 30 Cr. L. J. 141.

—where the two accused were convicted of murder under s. 302 I. P. C. by the S. J. and sentenced to death, though one of them inflicted a fatal blow and the other merely accompanied his co-accused without inflicting an injury, held that in the case of the latter transportation for life was an adequate sentence. 26 P. L. R. 405; 88 I. C. 365; 7 Lab. L. J. 479; 26 Cr. L. J. 1133.

—the provocation contemplated by Exception 1, must be such as will upset not merely a hot-tempered or hyper-sensitive person but one of ordinary sense and calmness. 96 I. C. 209; 1926 Lab. 598; 27 Cr. L. J. 897.

—where the accused gave unmerciful beating to the deceased and although numerous injuries were inflicted but no bones were broken
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to be likely to
cause his death or such as was sufficient in the ordinary course of nature to cause his death, wounds of more serious nature would be inflicted. 91 I. C. 61; 27 Cr. L. J. 29; 26 Punj. L. R. 702; 1925 Lab. 621; 7 Lab. L. J. 524, (1922 Lab. 260, 3 P. R. 1919 Cr.) Dist., similar case, 103 I. C. 843; 1927 Lab. 654; 28 Cr. L. J. 763.

—where in a sudden and unpremeditated fight under grave provocation injuries by knife are caused resulting death of the injured person who was the aggressor, the offence committed is culpable homicide not amounting to murder. 1929 Pat. 518; 1929 Cr. C. 278

Sec. 299-300. Cases of culpable homicide not amounting to murder—contd.

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Cases of culpable homicide amounting to murder.

—In case of savage attack with deadly weapon upon the accused following high fever and blood-poisoning and brain-fever resulting in death caused by wound inflicted, the accused was rightly convicted for murder, 7 S. L. R. 83: 15 Cr. L. J. 374: 23 Ind. C. 744

—where the accused is proved to have taken a spear and ran straight to the diseased and given him a stab it is deliberate murder. 1930 M. W. N. 1211.

—the act of strangulation was held to be murder. 23 P. R. 1890, Cr.

—deliberately killing the wife under the belief that she was haunted by evil spirit. 3 P. L. W. 356, killing a man believing to be a wizard, 1 P. L. T. 282, is murder amounting to culpable homicide.

—where the act is done with the intention of causing such bodily injury as the offender knows to be likely to cause death the offence amounts to culpable homicide amounting to murder. 37 C. 315, 4 W. N. 33, 35, 5 W. R. 132, 3 W. R. 22, 4 L. B. R. 132 306, 2 L. B. R. 125, 12 P. W. R. 1911.

—where *dhotura* is administered with the intention of causing death or such bodily injury as is likely to cause death, it amounts to
31 A. 148: 32 P. L. R.
90: 120 I. C. 534: 31 Cr.
s administered simply to
sec. 326. 19 P. R. 1919,
ers, 302, 45 A. 557: 75 I.
antity is to be considered.

—where death ensues as the result of a reckless administration of *dhotura* the offence is one of murder and not anything smaller. 45 A. 557: 1923 A: 608

—as *dhotura* poisoning is frequent in India there is very adequate ground for attributing to ordinary Indians a knowledge of the dangerous results of administering it. In such cases the burden
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Ss. 299-300. Cases of culpable homicide amounting to murder—contd.

171, it is so even when it is committed in a state of intoxication, 8 W. R. 71, 5 W. R. 58, 2 L. B. R. 201, it may sometimes amount to murder, 1 Weir 301.

It is proved to have been present and it is further proved that he shared with others the intention to cause death or injury sufficient to cause death, he can be convicted of murder even if there is no proof that he struck any blow to the deceased, 1931 Rang. 1: 8 Rang. 603: 1931 Rang. 99: 130 I. C. 355: 33 Cr. L. J. 495 F. B.

—stabbing in the abdomen with sufficient force to penetrate the abdominal walls and the internal viscera amounts to murder as the accused must be held to have intended to cause injury sufficient in the ordinary course of nature to cause death, 103 I. C. 268: 29 Cr. L. J. 369.

—a blow on the head with a *Lathi* is certainly likely to cause death and the accused must be presumed to have the intention of causing death but it does not follow that a blow on the head is always sufficient to cause death, 1928 Pat. J. 17.

—when the person committing the act knows that it is so imminently dangerous that it must in all probability cause death or such bodily injury as is likely to cause death and commits such act with intent of causing death or amounting to murder, 1928 Pat. J. 752, 35 A. 506, 35 P. R. 101, 1 W. R. 64.

—any person of average intelligence must know that the explosion of a bomb in a crowded room however carefully it may be thrown is an imminently dangerous act such as he must be deemed to know could in all probability cause death or at least such bodily injury as is likely to cause death. Absence of deliberation in the case running 290: 121.

—shooting under the illegal order of the superior officer amounts to murder, 83 I. C. 702: 17 S. L. R. 182: 1924 S. 33, 21 M. 241 fol.

—if the accused had been acting in a lawful manner, he would not be liable for murder.

—when a person strikes another on the head such blows as have the effect of fracturing both his right temporal and the right parietal bones and ultimately causing his death, he must prove

Ss. 299-300. Cases of culpable homicide amounting to murder contd.

that his intention was not to cause such bodily injury as would in all probability cause death or that he did not know that the injury inflicted by him would in all probability cause death 99 I. C. 77: 1927 Lah. 63 28 Cr. L. J. 45.

Exceptions 1 to 5.

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—the accused is to prove that his act was removed from the category of murder by one of the exceptions. 17 A. L. J. 866.

Exception 1, grave and sudden provocation.

—the act must be done whilst the person doing it is deprived of all self-control by grave and sudden provocation. It must be done under immediate impulse. 7 W. R. 27, 83 P. R. 1834, 19 W. R. 35. If the act was done after the first excitement had passed away, and there was time to cool, it is murder. 12 W. R. 68, 8 A. 635, 19 W. R. 35, 8 A. 622, 635, 18 A. L. J. 851 *contra*. 28 C. 571.

—condition of the mind of the offender at the time of provocation should be taken into account. 2 M. 122, 108 I. C. 903: 29 Cr. L. J. 454

—It is not the necessary consequence of anger that the power of self-control will be lost. 20 B. 215.

—the provocation must be such as will upset not merely a party and non-tempered person, but one of ordinary sense and calmness 5 Lah. 67: 81 I. C. 826: 25 Cr. L. J. 1050: 1924 Lah. 450.

—the provocation must be such as would excite the mind of a reasonable man so as to lead the jury to ascribe the act to the influence of that passion. 1930 Cal. 199: 1930 Cr. C. 231.

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murder. *above case.*

—whether the provocation is grave and sudden such as to deprive the offender of the power of self-control is a question of fact to be determined by the circumstances of the case. 108 I. C. 902: 29 Cr. L. J. 454.

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—but when the prosecution evidence proves the accused's right to the exception accused must be given the benefit though he not plead it. 1935 Nag. 37.

Ss. 299-300. *Exceptions 1 to 5—contd.*

—where the deceased remonstrated with the accused's father for diverting the course of the old water channel which led to a quarrel and then the accused came to support his father and assaulted the deceased, held that there was no grave and sudden provocation within the meaning of exception (1). 1924 Lah. 742.

—when the provocation is caused by the adulterous intercourse of the wife the offence committed is not murder. 81 I. C. 901; 25 Cr. L. J. 1077. 1925 Nag. 37, 83 I. C. 482, 6 L. L. J. 437, 71 I. C. 993; 24 Cr. L. J. 273, 68 I. C. 403; 23 Cr. L. J. 563, 6 W. R. 42, 1 W. R. 46, Rat. Un. Cr. 932, 27 P. R. 1900, 8 W. R. 88, 3 B. L. R. 33, 2 M. 122, 3 M. 83, 190 P. L. R. 1905, 18 A. 497, 28 C. 613, 3 Punj L. R. 652; 119 I. C. 323; 30 Cr. L. J. 1044.

—where the accused on returning home at night saw his wife sleeping with her paramour who on seeing the accused ran away; the accused pursued him but his wife grappled with him and enabled the paramour to run away. Then the accused caused the death of his wife with a knife; the offence being committed under grave and sudden provocation sentence of three years' rigorous imprisonment was held to be sufficient. 1930 Lah. 172; 11 Lah. L. J. 485; 1930 Cr. C. 180.

—but where the accused asked his wife to sever her connection with her paramour and in the course of a quarrel that ensued the accused lost his temper and killed her, no grave and sudden provocation was proved. 1928 Lah. 544; 108 I. C. 166; 29 Cr. L. J. 347.

—when the husband finds his wife in the act of adultery and kills her he is guilty of manslaughter only and not of murder but this rule does not apply where the relationship between the parties is not that of husband and wife. 1930 Cal. 199; 1930 Cr. C. 231.

—where the accused saw the deceased unexpectedly and at once struck him one blow in return for the beating which he had received on the previous day and the single blow resulted in his death later, held that it would be unsafe to hold that the accused intended to do more harm than to cause grievous hurt to the deceased and a conviction under s. 325 was proper. 88 I. C. 286; 26 Punj. L. R. 430; 1925 Lah. 559; 26 Cr. L. J. 1188; 7 Lah. L. J. 573.

Exception 2, good faith of the right of private defence.

—right of private defence is to be proved by the accused. 8 C. W. N. 714.

—there was no right of private defence in the following cases. 5 W. R. 73, 83, 10 W. R. 9, 3 A. 258, 29 P. R. 1902, 35 P. R. 1216, 13 W. R. 55, 6 W. R. 56.

—in order to claim the benefit of exception 2 to sec. 300 the accused must show that he had no intention of doing more harm than was necessary. 81 I. C. 347; 25 Cr. L. J. 811.

Ss. 299-300. Exceptions 1 to 5—*contd.*

—where the accused a servant employed to watch the crops of a field went round one night and seeing a man cutting the crop at midnight struck the thief a blow on his head felling him to ground and the victim eventually died, held that under exception 2 to sec 300 I. P. C. the accused exceeded the right of private defence of property and the conviction of the accused should be under s 304 64 I. C. 133; 22 Cr. L. J. 741.

—where as a result of enmities between two parties there was an encounter in the open space in front of the two neighbouring houses and at some stage of the encounter one of the accused ran into the *dalix* of his own house where he was followed by the deceased and a sharp struggle occurred just inside the entrance door and the accused inflicted on the deceased a fatal wound with his spear causing his death, held that as the accused was within the threshold of his own house Exception 2 to s. 300 covered the case. 89 I. C. 364; 1925 All. 753; 26 Cr. L. J. 1320.

—where the accused caused the death of the deceased under circumstances brought about by himself he cannot be exonerated from all liabilities because of the plea of self-defence and is liable to be convicted for culpable homicide though not for murder. 1930 M. W. N. 502.

Exception 3, public servant or person aiding public servant exceeding power.

—the public servants were not protected in the following cases. 21 M. 249, 5 N. W. P. 130.

Exception 4, without pre-meditation in a sudden fight in the heat of passion without taking undue advantage or acting in cruel manner.

—"sudden" means unpremeditated. 5 C. 31, 1 W. R. 33, 24 W. R. 48, 40 A. 686, 40 A. 103 *Diss.*

—a pre-meditated action cannot bring the accused within the exception. 8 C. L. J. 561.

—premeditation does not mean the long harbouring of a design. 1930 M. W. N. 1211.

—where a person struck his wife on the head with a wooden pestle in consequence of which she died at once, held that exception 4 to s. 300 is not applicable in as much as there was no fight. 6 L. L. J. 527.

Ss. 299-300. Exceptions 1 to 5—contd.

people the deceased had caused no injuries worth the name and the accused had dealt the violent blow so as to cause death in a brutal manner, the accused was guilty of murder and explanation IV did not apply. 1928 Oudh 282 : 50 O. W. N. 391 : 113 I. C. 481 : 30 Cr. L. J. 173.

—where the accused pleads that the deceased died as the result of a sudden and unpremeditated fight arising out of the sudden quarrel but it appears that the accused took undue advantage of the deceased lying on his charpoy and being unarmed and undefended Exception 4 does not apply. 101 I. C. 191 : 28 Cr. L. J. 415 : 1927 Lah. 508.

—where the deceased who was unarmed and is not shown to have assaulted the accused in anyway, has as many as six injuries on his head it is difficult to hold that the case falls within exception 4 of s. 300 because even assuming that the quarrel was sudden it would seem that the accused acted in a cruel manner in injuring the deceased. 1931 Lah. 280 : 1931 Cr. C. 536.

—where there was no motive for murder nor any grudge against the deceased and the accused himself also got several injuries in the course of the sudden and unpremeditated fight, the accused was entitled to the benefit of exception 4 to s. 300 I. P. C. 1925 Lah. 633 : 7 Lab. L. J. 333.

—Exception 4 applies to cases wherein, whatever may be the origin of the quarrel, the subsequent conduct of both the parties put them upon an equal footing. 93 I. C. 251 : 1926 Lah. 219 : 27 Cr. L. J. 459 : 27 Punj. L. R. 132.

—when a fatal attack was not a premeditated one and the victims were injured in the heat of passion upon a sudden quarrel and the offenders did neither take undue advantage nor acted in an unusual manner the requirements of exception 4 to sec. 300 are not satisfied. 26 P. L. R. 363.

—where the accused struck only one blow on the head and one blow on the leg and thereby caused death, held that by those lathi blows he did not act in a cruel or unusual manner and was entitled to fourth exception in sec. 300 I. P. C. 1929 Lah. 719 : 1929 Cr. C. 311 : 30 Punj. L. R. 487.

Exception 5, suffering death with consent.

—death caused at the request of the deceased is only culpable homicide not amounting to murder. 60 M. L. J. 616 : 1 R. 1931 Mad. 483 : 131 I. C. 147 : 1931 M. W. N. 393 : 1931 Cr. C. 484 : 1931 Mad. 436.

—it must be proved that the person killed, with a full knowledge of the facts determined to suffer death or to take the risk of death, and that this determination continued up to the moment of death. 18 C. 484 F. B.

—where the accused strangled his beloved aged 16 years to death a
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S. 302. (Punishment for murder)—*contd.*

—where the murder is not deliberate but occurs suddenly after mutual abuse, 1928 Lah. 913, 1930 Lah. 545 : 125 I. C. 325 : 1930 Cr. O. 675, or where the murder is on provocation, 106 I. C. 457 : 29 Cr. L. J. 41, transportation for life may be the proper sentence. But where the murder is premeditated and deliberate, capital sentence should be inflicted even if there is cause of provocation. 1928 Oudh. 241 : 29 Cr. L. J. 465 : 109 I. C. 113. *contra*. 11 Lah. L. J. 299 : 1929 Lah. 788 : 30 Cr. L. J. 1226 : 1929 Cr. C. 420.

—the fact that the accused had the capital sentences suspended over their heads for nearly six months should be considered by the H. C. 17 C. W. N. 1213.

—a trustworthy dying declaration supported by circumstances is sufficient to support a conviction for murder. 4 P. W. R. 1909.

—the time of the *post mortem* must be recorded as in many cases it assists the court in determining whether death took place at the time alleged or not. 1931 Oudh 119 : 131 I. C. 439 : 1931 Cr. C. 241.

—conviction must be based on substantial and sufficient evidence not merely on moral convictions. 5 W. R. Cr. 28, 8 W. R. Cr. 28.

—where murder was committed by way of retaliation for injury sentence of death was reduced to transportation for life. 6 W. R. Cr. 46.

—where the prisoner committed murder in the belief that the deceased was a wizard and the cause of his child's illness and that by killing the deceased his child's life would be saved, sentence of death was commuted to transportation. 6 W. R. 82.

—for sacrificing a son to a deity in order to obtain wealth in the belief that son would come to life again, sentence of transportation for life was passed. 7 W. R. Cr. 64.

—in case of murder where the body is not found sentence of death should not be passed. 11 W. R. Cr. 20.

—disappearance of the body of the deceased under circumstances where it is not humanly impossible for him to have survived the evidence will not be sufficient to convict the accused. 1928 Pat. 473 : 111 I. C. 721 : 29 Cr. L. J. 913.

—in case of murder committed by pregnant woman, capital sentence may be passed but the execution of it should be delayed till after delivery. 15 W. R. Cr. 66.

—the fact that the accused is a woman is not a conclusive reason for refraining from passing sentence of death. 1 Rang. 751.

—accompanying the murderers with the deceased and returning next day without the deceased and subsequent disappearance of the accused's accomplices is sufficient to prove the accused's complicity.

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consequence will be presumed to be a natural and probable conse-

S. 302. (Punishment for murder)—*contd.*

quence until the contrary is affirmatively proved. 64 I. C. 833 : 23 Cr. L. J. 54

—when a man in a lathi fight uses his lathi with the result that a man is killed it may be presumed that he had the knowledge of the result. 27 A. L. J. 244 : 116 I. C. 19 : 30 Cr. L. J. 559 : 1929 All. 160

—the best criterion of the force and character of a blow is to regard the result which it has effected. 1930 Leb. 490 : 1930 Cr. C. 602.

—it is settled law that where a blow aimed at one person lights upon another and kills him the offence committed by the assailant is the same if it would have been in case the blow had struck the intended person. 1928 Lah. 344 : 29 Cr. L. J. 280 : 107 I. C. 764

—where the accused went with the deliberate purpose of striking down the deceased the judge should not refrain from inflicting death sentence on the sole ground that the accused was under the influence of drink. The presumption that a man intends the natural consequences of his acts is not rebutted by the evidence of drunkenness falling short of a proved incapacity in the accused to form the intent necessary to constitute the crime. 94 I. C. 406 : 1928 Lab. 232 : 27 Cr. L. J. 630 : 27 Punj. L. R. 294.

—where the accused stabbed the deceased who was his brother-in-law while the latter was in bed but no motive for the crime was proved the accused was liable to be convicted under s. 326 and not under s. 302 I. P. C. (per *Mukherjee J.*) The rule of English Criminal Law that one must be taken to intend the natural and probable consequences of his act is not always quite easy to apply to the Indian Criminal Law in view of the distinction the Penal Code draws between intention and knowledge. The question of knowledge much depends on the intellectual capacity of the offender. 32 C. W. N. 345 : 47 C. L. J. 240 : 1928 Cal. 439 : 109 I. C. 482 : 29 Cr. L. J. 546 : 10 A. I. Cr. R. 259.

—the offence of culpable homicide presupposes an intention or knowledge of likelihood of causing death. 77 I. C. 292 : 25 Cr. L. J. 356 : 1924 Nag. 281.

—in case of murder by concerted attack with lathis the accused will be punished for murder. 20 A. L. J. 900 : L. R. 3 A. 161.

—generally the age or the sex of the murderer cannot of itself be sufficient for a lenient sentence. 18 N. L. R. 101 : 64 I. C. 277 : 1922 Nag. 65.

—where the medical evidence showed that the body of the deceased bore two wounds of a penetrating nature one perforating the heart and the other penetrating the abdomen dividing the intestines, it must be deemed that the intention of the accused was if not to cause death, at least to cause such bodily injury as likely to cause death. 7 Leb. L. J. 582 : 26 Punj. L. R. 829.

S. 302. (Punishment for murder)—*contd.*

—if a person intends to cause an injury which is in the ordinary course of nature sufficient to cause death he is guilty of murder. 90 I. C. 147; 26 Cr. L. J. 1491, 1930 Lab. 457; 122 I. C. 491; 31 Cr. L. J. 444; 1930 Cr. C. 561.

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2, 221; 26 Cr.

L. J. 125, 1930 Lab. 491. 31 Cr. L. J. 444; 122 I. C. 491; 1930 Cr. C. 561.

—where the accused shot the deceased intending to maim him for life and the act in fact caused death, a sentence of death should be passed. 53 M. 937; 1930 Cr. C. 1033; 1930 M. W. N. 377; 59 M. L. J. 945; 127 I. C. 654; 32 Cr. L. J. 30.

—where one of the accused inflicted the fatal blow and the other merely accompanied him without inflicting any injury on the deceased, transportation for life was an adequate punishment in the case of the latter, 88 I. C. 365; 26 Cr. L. J. 1133; 1923 Lab. 584; 26 Punj. L. R. 405, so also where the accused was found constructively guilty being a member of a gang which committed murder adequate punishment. 86

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struck the fatal blow.
1929 Cr. C. 423.

—the view that when two or more persons bind themselves together for the express purpose of taking a man's life it is not right to pass a capital sentence unless the person who delivered the particular fatal blow can be identified, is wholly erroneous. 52 M. 147; 1929 M. W. N. 181; 30 Cr. L. J. 628; 1929 Mad. 342; 56 M. L. J. 194; 116 I. C. 135.

—even though there is no evidence to suggest that the accused physically assisted the actual murderer in killing the accused but there is evidence that the accused went all the way from their house to the scene of murder and were present at the time when and the place where the murder was committed and gave moral support to the crime which was committed in their interests, the accused are guilty under s. 302 I. P. C. 22 A. L. J. 1075.

—where the accused ordered his men to beat the opposite party and in consequence of that order the men of the opposite party were beaten and some were killed, the accused was guilty of abetment of murder. 116 I. C. 372; 30 Cr. L. J. 621; 1928 Cal. 752, 1928 Pat. 100 fol.

—where a large number of persons participate in a murder there is no practice to select only those for death-sentences who have taken an actual part in causing the death. *Prima facie* all should be sentenced to the extreme punishment unless there

S. 302. (Punishment for murder)—contd.

are special circumstances in favour of alternative punishment of transportation for life. 8 Pat. 181: 1929 Pat. 161: 30 Cr. L. J. 737: 117 I. C. 176

—where the accused a habitual *ganja*-smoker while under the influence of that drug dashed a child to the ground and killed it and there was no motive for the offence, the accused must be held to have committed the act while he was under some mental derangement and that his case came under s. 86 I. P. C. 59 C. L. J. 34

—where a number of persons armed with deadly weapons set upon a man and killed him, their common intention can be presumed to be to cause death or such bodily injury as would make them guilty of murder. 69 I. C. 449: 23 Cr. L. J. 721, 45 A. 130: 71 I. C. 234.

—where during an altercation between two parties the deceased was hit on the thigh with an axe by one accused and another on the head and fell down when the other accused struck him on the skull and he died under s. 325 32 P. L. R. 401.

—where A attacked B with a lathi and hit him on the head and then asked C to press B's mouth with a cloth which C did and in the *post mortem* B's skull was found to be shattered into several pieces and death was found to be due to injuries on the head, the common intention of A and C in the furtherance of common intention of A and death had been caused by C. 1930 Lah. 45: 31 Cr. L.

—where in a case as a result merely of a boyish quarrel just a short time before, the accused stabbed the deceased with a pen-knife four inches in length, there can be no conviction for murder or culpable homicide not amounting to murder where the *corpus delicti* is not established. 1922 Lah. 26.

—It is unsafe in a murder case to rely on the evidence of witnesses who have resiled from their previous statements. 1925 Mad. 879: 1925 M. W. N. 319.

—where the villagers were well aware of the identity of the culprit but whether it was because the real murderers were public favourites or the deceased was unpopular no evidence was forthcoming, held that the accused could not be convicted on the uncorroborated evidence of the two brothers of the deceased. 1929 Pat. 527: 1929 Cr. C. 287.

—where the accused was convicted on the uncorroborated evidence of an interested witness who was a collateral though not a near relation of the deceased whose family had enmity with the accused held that the conviction was valid. 1929 Pat. 527: 1929 Cr. C. 287. 10 Lah. 76, but the mere evidence of the witnesses and the uncorroborated evidence of the witnesses 10 Lah. L.

S. 302. (Punishment for murder)—*contd.*

—enmity is a double edged weapon and what would be a reason for the murder might well be a reason for the fabrication of false case. 10 Lah. L. J. 229 : 112 I. C. 215 : 29 Cr. L. J. 999

—the well-established fundamental rule of estimating the effect of circumstantial evidence is that in order to justify the inference of guilt the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other hypothesis than of his guilt 96 I. C. 849 : 27 Cr. L. J. 993.

—a conviction based on purely circumstantial evidence must be treated with the greatest caution and subjected to the closest scrutiny. The existence of a motive, an opportunity and the exclusion of any alternative motive would not be sufficient to support a conviction without at least some other evidence. In such cases a sentence which is irrevocable should not be passed. 76 I. C. 97 : 35 Cr. L. J. 97 : 47 A. 39 : 1925 All. 223.

—conviction based on circumstantial evidence relating to demeanour of the accused is not sustainable. 99 I. C. 324 : 28 Punj L. R. 27 : 28 Cr. L. J. 116 : 1927 Lah. 51.

—in order to furnish a basis for conviction for murder circumstantial evidence requires a high degree of probability. 29 Cr. L. J. 640 : 109 I. C. 912 : 10 A. I. Cr. R. 350 ; where the case is one of suspicion against the accused and the circumstantial evidence bears palpable signs of concoction it would be unsafe to convict the accused. 122 I. C. 587 : 31 Cr. L. J. 438, 1930 Oudh. 460.

—the trial of an accused in a murder case does not end if he is found guilty. decided upon the whole of the

It is not the usual practice
use where the natural sequence
I. C. 582 : 1928 Cal. 775 : 30

Cr. L. J. 508, (8 Bom. L. R. 240, 19 All. 119, 19 Bom. L. R. 356) *Ref.*

—in a murder case the mere fact that the conviction is based on circumstantial evidence is no reason why a lesser sentence should be passed 1930 Sind 225 : 1930 Cr. C. 865, 76 I. C. 97 *not fol.* 1929 Mad. 423, 1929 Sind 179 *Ref. on*, 7 S. L. R. 109, 1921 Sind 145, 1925 Sind 289 *Ref.*

—in case of murder the court should not refrain from passing the death sentence merely because the conviction is based on circumstantial evidence. The crime of wife murder is very prevalent and should be vigorously dealt with. Where the only motive is to get married again the sentence of death is the only appropriate punishment. 1929 Mad. 667 : 30 Cr. L. J. 971 : 118 I. C. 817 : 1929 Cr. C. 138 : 1929 M. W. N. 270.

—the mere suspicion of wife's conduct is no extenuating
it should not be
the plea that
116 I. C. 142 :

—but where the accused committed the murder of his wife at a moment when he was infuriated at her conduct in persistently

S. 302. (Punishment for murder)—contd.

continuing her illicit intimacy, a sentence of transportation for life would meet the ends of justice. 1930 Lab. 171; 1930 Cr. C. 179; 11 Lab. L. J. 461.

—the fact that the accused was one of two persons with whom the deceased was last seen and the fact that the accused pointed out the place where the dead body was discovered are not sufficient to hold that the accused was one of the murderers though grave suspicion may attach to him. 103 I. C. 97; 1927 Lab. 541; 28 Cr. L. J. 641.

—where it was proved that the accused had knowledge of the murder and he also produced certain ornaments belonging to the deceased, the fact that the accused was a friend of the deceased is not sufficient to support the charge. 486 111 I. C. 445.

—the mere fact that property belonging to the deceased was discovered at a place pointed out by the accused cannot be regarded as a sufficient proof of murder by the accused. 96 I. C. 849; 27 Cr. L. J. 993, 1924 Lab. 109 *fol.*

—the discovery of a bloody axe in the house of the accused where others have access is not alone safe to convict the accused of murder. 91 I. C. 1002; 1926 Nag. 229; 27 Cr. L. J. 186; 9 N. L. J. 80.

—the discovery of a bloody axe in the house of the accused where others have access is not alone safe to convict the accused of murder. 91 I. C. 1002; 1926 Nag. 229; 27 Cr. L. J. 186; 9 N. L. J. 80.

—if the unexplained possession of stolen property is the only circumstance against the accused he cannot be convicted of murder and when the charge is for murder or theft or both it is not legitimate to presume that the accused is guilty of the more serious offence of murder. 93 I. C. 42; 1926 Med. 638; 27 Cr. L. J. 394.

—the possession of stolen goods just after the theft may be indication not only of the offence of larceny or of receiving with guilty knowledge but of any other more aggravated crime connected with the theft and it forms also a material piece of evidence in case of murder. This presumption is specially applicable when there is evidence that the accused was a woman that the stolen goods were found in her possession and that she was the person who committed the theft. 1930 Cal. 379; 1926 Lab. 691; 1926 Dist. 596.

—if the court is satisfied as to the fact of murder the adequacy or inadequacy of the motive is of no importance. 1929 M. W. N. 592, 1930 Cr. C. 18; 1930 Lab. 50, 1931 Oudh. 119; 131 I. C. 439; 1931 Cr. C. 241.

—mere proof of motive and production of the corpse is not sufficient to sustain conviction for murder. 29 Punj. L. R. 33; 29 Cr. L. J. 252; 107 I. C. 482.

—where the accused, a student distributed certain sweets containing arsenic among his fellow students and he himself also

S. 302. (Punishment for murder)—*contd.*

ate a portion of the sweets and all the persons showed symptoms of arsenic poisoning while only some of them died and there was no motive for the crime the whole appearing doubtful the accused could not be convicted of murder. 30 Punj L. R. 424: 10 Lah. L. J. 555: 115 I. C. 469: 30 Cr. L. J. 478.

—where the grievous injuries result in pneumonia and death the perpetrators of the attack are guilty of murder. 1928 Lah. 831: 110 I. C. 230: 29 Cr. L. J. 678, 121 I. C. 65: 31 Cr. L. J. 198.

—where the accused is found guilty of abetment of murder under s. 302 and 109 I. P. C. the conviction may be treated as an acquittal on a charge of murder under s. 302 I. P. C. and the Local Govt. can prefer an appeal against the acquittal. 1930 Lah. 338: 1930 Cr. C. 386: 12 Lah. L. J. 33, 50 A. 722 *Rel. on.*

—where the action which ultimately results in death of a person is continuous and the different incidents cannot be resolved into separate action inspired by different motives and committed for different reasons, the person doing the act must be deemed as having done it with the intention of causing death and must be held to be guilty of murder. 1931 Lah. 257: 130 I. C. 321, 32 Cr. L. J. 483: 1931 Cr. C. 91, (42 M. 547, 15 B. 194) *Dist.*

—the accused gave arsenic to a girl for being administered to her husband with the object of gaining his love. The girl mixed it with cooked food and served the same to her husband, father-in-law and brother-in-law, the first did not die but others died, the accused was guilty under ss. 302 and 115 I. P. C. 35 O. W. N. 573.

—where the wife administered arsenic with sugar to make her husband submissive to her will and caused his death she was not guilty of murder as she was not aware that she was administering poison. 4 Lah. L. J. 445. *Contra. below.*

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reby caused his death
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502: 1930 Cr. C. 1116:

—in case of murder by arsenic poisoning it is very unsafe to convict a person without such evidence as can be obtained from a proper scientific inquiry. The proper enquiry consists in the careful examination of the viscera of the body; mere examination of the vomit or nightsoil is totally insufficient and it is extremely dangerous to rely upon some traces of arsenic found in either of these two things. 1930 All. 532: 1930 Cr. C. 757.

—where the evidence against the accused is that the deceased was last seen in his company and that the accused disappeared immediately after the murder and he set up a false defence of having no knowledge of the deceased, these facts and circumstances were sufficient proofs of the murder by the accused. 1930 Lah. 264: 31 Cr. L. J. 138: 120 I. C. 529: 1930 Cr. C. 297.

S. 302. (Punishment for murder)—*contd.*

—the mere presence of the accused in the house of the accused would not by itself be convincing evidence of conspiracy to murder unless it be shown that they were in some way connected with the murder. 32 O. W. N. 783; 117 I. C. 680; 30 Cr. L. J. 820.

—the mere fact that the accused knows where the dead body has been buried does not prove that he committed the murder. 89 I. C. 901; 26 Cr. L. J. 1429.

—the mere fact that the accused produced blood-stained hatchet and dang from the heap of Turu does not prove his guilt of murder. 1928 Lah. 335; 10 Lah. L. J. 58. Similar case, 1928 Lah. 724; 29 Punj. L. R. 388; 10 Lah. L. J. 311. 110 I. C. 329; 29 Cr. L. J. 697.

—when the identification is not clear, benefit of doubt will be given. 76 I. C. 397; 25 Cr. L. J. 173; 1924 Lah. 168.

—It has invariably been held in all the Courts in India that in the murder of her newly born illegitimate child by a woman there are mitigating circumstances sufficient to redeem the appropriate penalty very much below a sentence of transportation. 75 I. C. 767; 25 Cr. L. J. 63; 1925 Nag. 119.

—beyond the provisions of secs 82 and 83 I. P. C. the Code does not say anything about there being any age limit for the capital sentence. 53 M. 861; 1930 M. W. N. 681; 129 I. C. 228; 1930 Cr. C. 1188; 32 Cr. L. J. 261; 59 M. L. J. 939; 1920 Mad. 972.

—the extreme circumstance which is imposing a lesser sentence in a case of murder. 32 P. L. R. 414; 131 generally the age is sufficient for a lesser sentence. 1922 Nag. 65; 112 I. C. 345; 1928 Lah. 531.

—but where the murder is of a brutal nature the youth of the accused is no ground for not imposing the capital sentence. 107 I. C. 99; 29 Cr. L. J. 211; 9 A. I. Cr. R. 525; 1930 Cr. C. 18; 1930 Lah. 50; 1931 Oudh. 89; 1930 Cr. C. 965; 128 I. C. 80; 32 Cr. L. J. 83; 53 M. 861; 1930 M. W. N. 681; 1930 Cr. C. 1188; 129 I. C. 228; 32 Cr. L. J. 261; 1930 Mad. 972.

—youth alone does not constitute an extenuating circumstance but if there is the additional circumstance that the prisoner had no personal enmity with the deceased and that he was probably a tool in the hands of other persons the extreme penalty of death need not be exacted. 1928 Lah. 855; 29 Cr. L. J. 682; 110 I. C. 234.

—the mere fact that the murderer was only 19 or 21 years of age and that the act was prompted by feelings of veneration for the founder of his religion and anger at them who had scurrilously attacked him is no reason for inflicting a lesser punishment. 1930 Lah. 157; 11 Lah. L. J. 533; 120 I. C. 1; 30 Cr. L. J. 1125; 1930 Cr. C. 165; 1928 Lah. 531. *Ref.*

—where the court held that the offence of murder was committed but sentenced the accused to transportation solely on the ground

S. 302. (Punishment for murder)—*contd.*

that their confession alone made the conviction possible, the reason was not sufficient for not awarding the extreme penalty of law. 76 I. C. 180 : 25 Cr. L. J. 116 : 1924 Lah. 624.

—where there was no motive for a premeditated murder and the probability was that there was a violent quarrel when the accused a young man of 20 was taking his wife and child from a neighbouring village to his own village and he killed them on the way, held that capital sentences in such case should not be passed. 6 Lah. L. J. 323 : 1924 Lah. 654.

—an improper proposal of the deceased to the accused does not amount to grave and sudden provocation but it may be taken into consideration in passing the sentence. 1930 Lah. 415 ; 121 I. C. 185 : 31 Cr. L. J. 229 : 1930 Cr. C. 475.

—where the deceased himself was the aggressor and the quarrel was sudden, it is a mitigating circumstance for the purpose of sentence. 6 Lah. L. J. 483.

—when a person sees a murder committed and gives no information thereof his evidence is little better than that of an accomplice. 5 Lah. L. J. 322 : 1923 Lah. 391.

—where the dead body does not appear and the murder is established only by a retracted confession, lesser of the two penalties should be awarded. 89 I. C. 903 : 26 Cr. L. J. 1431 : 23 A. L. J. 821 : 1925 All. 627 F. B., but generally sentence must be determined upon the gravity of the offence irrespective of the circumstance whether the body has been discovered or not. 1931 Lah. 25 : 130 I. C. 331 : 1931 Cr. C. 89, 23 A. L. J. 821 *fol.*

—where offences under Ss. 149 and 302 I. P. C. are committed against three different persons there should be separate heads of charges and not a single one. 54 C. 237 : 44 C. L. J. 253 : 99 I. C. 227 : 28 Cr. L. J. 99 : 1927 Cal. 17.

—where the accused stabbed the deceased who was his brother-in-law while the latter was in bed but no motive for the crime was proved the accused was liable to be convicted under s. 326 and not under s. 302 I. P. C. 32 C. W. N. 345 : 47 C. L. J. 240.

S. 304 (Punishment for culpable homicide not amounting to murder).

—a person who voluntarily inflicts injury such as to endanger life must, except in the most extraordinary and exceptional circumstances be presumed to know that he is likely to cause death. A man who knows that he is likely to smash the skull of his victim knows also that he is likely to cause his death. If the victim is actually killed the conviction should be of the offence of culpable homicide. 1922 B. N. 192 : 28 B. N. 192 : 1922 B. N. 192

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S. 304. (Punishment for culpable homicide not amounting to murder)—*contd.*

—in a charge to the jury the Judge should direct the jury to state whether the accused intended to kill or committed, held liable for the offence, 12 W. R. Cr. 50.

—finding of jury that crime was not murder because the accused had no object in killing the deceased does not amount to conviction of culpable homicide. 1 W. R. Cr. 50.

—in a charge to the jury the Judge should draw a distinction between the two classes of culpable homicide mentioned in s. 304 I. P. C. and direct them to find specially under which, if either, the prisoner was guilty. 6 B. L. R. App. 86; 15 W. R. Cr. 17.

—in case of murder where there is absence of intention though not of knowledge, sentence should be under s. 304 I. P. C. 7 W. R. Cr. 47.

—in a case of an alleged homicide the Judge is to see, first, what degree of injury did the man intend, secondly, what did he know as to the consequence of such injury. Where the jury found that the accused had not the knowledge of the consequence of the injury the Judge cannot differ from them as to the intention or knowledge of the accused and conviction should be under the second clause of s. 304. 34 C. W. N. 1127; 1931 Cal. 261; 32 Cr. L. J. 187; 128 I. C. 808; 1931 Cr. C. 293.

—where the accused caused the death of a thief by branding him he was guilty under s. 304. 7 W. R. Cr. 54.

—where burglar was killed with lathi blows when he was escaping, needless violence having been used the persons inflicting the blows were liable to be convicted under s. 304. 1930 Oudh 408; 1930 Cr. C. 948; 7 O. W. N. 797.

—where the deceased was aggressor and not the accused the court should not pass a severe sentence. 99 I. C. 56; 28 Cr. L. J. 24.

—where a man struck a woman a single blow across the abdomen with a stick and the woman died two days after, conviction for murder was set aside upholding the punishment under the first part of sec. 304 I. P. C. 12 C. L. R. 86.

—where the deceased woman abused the wife of the accused who in sudden anger struck the deceased a heavy blow on the head with a heavy lathi the circumstances of the case did not lead to the inference of an intention to kill. 8 Pat. L. T. 594; 28 Cr. L. J. 541; 102 I. C. 349; 1927 Pat. 406.

—where the accused kicked a female child of 8 or 9 years of

—a youth of about 18 had without any ancillary violence, sexual intercourse with a well-developed girl probably under 12 years

S. 304. (Punishment for culpable homicide not amounting to murder)—contd

of age but the girl did not consent and her vagina was ruptured and, as a result, she died of shock, held that the death was not the natural consequence to be expected from a single sexual offence and the accused was not guilty under s. 304 I. P. C. but of rape only. 3 Pat. 410, 83 I. C. 651: 1924 Pat. 553.

—where it is impossible to say which of the two appellants struck the fatal blow the offence committed by them falls under s. 325. 72 I. C. 611: 24 Cr. L. J. 451.

—where the intention to cause death cannot be clearly formed without any other possible explanation of the act of the person giving poison, a conviction for murder cannot stand. 77 I. C. 801: 25 Cr. L. J. 449: 1924 Pat. 14.

—where it was clear that one of the accused caused the fatal injury, but it was impossible to say which of them caused that injury, a conviction under s. 304 I. P. C. is held in law and they can be convicted of grievous hurt only. 7 Lah. L. J. 44: 86 I. C. 341: 26 Cr. L. J. 757: 1925 Lah. 318, 86 I. C. 337: 1925 Lah. 117: 26 Cr. L. J. 753.

—s. 59 I. P. C. authorises a sentence of transportation for life, but not one of transportation for a term of years exceeding the maximum term of imprisonment which can be awarded for the offence. Where the appellants were convicted under s. 304 I. P. C. and were liable under that section to a sentence of imprisonment for a term not exceeding 10 years and were sentenced to 3 years rigorous imprisonment but upon appeal the H. C. affirmed the conviction and enhanced the sentence to 14 years transportation, held that 10 years was the maximum term of years to which the appellants could be sentenced to transportation. 44 M. 297: 1921 M. W. N. 26 P. C.

—where the accused along with two other persons who were armed, went to the scene of occurrence and gave them order to beat the deceased and they assaulted the deceased so severely that he subsequently died, the reasonable inference is that the accused intended all the results that followed and was punishable under Ss. 304 and 109 I. P. C., 6 Pat. 627: 107 I. C. 305: 1928 Pat. 100: 29 Cr. L. J. 239.

—where the wounds were not serious but such as would not individually amount to more than simple hurt and there was no motive for murder proved, the accused was guilty of culpable homicide not amounting to murder. 1925 Lah. 621: 26 Punj L. R. 702: 7 Lah. L. J. 524

—where the accused while smarting under a severe blow from a stick in the midst of a sudden fight and probably apprehensive of further violence, finding a knife at hand took it up and in the melee, inflicted the wound causing the death of the deceased, he was guilty under s. 304 I. P. C. 24 W. R. Cr. 48.

—when in a fight between two parties the accused dealt a blow with a *kash*: under a mistaken impression that the deceased

S. 304. (Punishment for culpable homicide not amounting to murder)—*contd.*

was a partisan of the other side and there was no motive otherwise, held that the accused did not take any undue advantage or act in a cruel or unusual manner and was liable to punishment under s. 304 and not under s. 302 I. P. C. 30 Cr. L. J. 410: 27 A. L. J. 503. 1929 All. 535: 1929 Cr. C. 77.

—where *corpus delicti* is not established, there can be no conviction for culpable homicide not amounting to murder. 4 W. R. Cr. 29.

—stuffing cloth into deceased's mouth in order to silence him is punishable under s. 304 I. P. C. 1915 M. W. N. 621.

—where in a quarrel the accused took an iron-shod stick and struck one blow on the head of the deceased which caused his death he was guilty not of murder but of culpable homicide not amounting to murder because it was possible that the blow he struck exceeded in violence the injury he had in view at the moment of striking it. 41 B. 27: 18 Bom. L. R. 793.

—where a person is dragged by the pawns of his creditor against his will it constitutes an offence of abduction under s. 362 thereby giving the person so dragged the right of private defence of his body even to the causing of death subject to the restriction mentioned in s. 99. If the person so defending exceeds his power of self defence and on sudden irrational impulse kills the person against whom he exercises the right he is guilty under s. 304 and not under s. 302. 1930 Pat. 347. 11 Pat. L. T. 381. 1930 Cr. C. 719.

—where there was sudden quarrel and a fatal blow was struck

appropriate section for his conviction is s. 304. 97 I. C. 952: 27 Cr. L. J. 1192.

—where the accused killed his mother by kicking and beating her and was convicted on a charge of causing death by a rash act, held that the prisoner was guilty of culpable homicide not amounting to murder. 7 Mad H. C. R. 119.

—where the accused by gripping and squeezing the testicles of the deceased, reduced them to a pulpy condition, thereby causing an injury which resulted in death, held that the death was the probable consequence of the prisoner's act and he was guilty under s. 304 I. P. C. 19 M. 356.

—where in the course of a murderous attack on his wife by accused she ran to the deceased woman for protection and closed her arms round her waist when the accused, with the object of making her let go his wife, gave a fatal slap to the accused, he was guilty, under this sec. 1912 M. W. N. 193.

—where an accused struck his wife a blow on her head with a plough-share which, though not shown to be a blow likely to cause death did in fact render her unconscious and believing her to be dead, in order to lay the foundation of a false plea of suicide.

S. 304. (Punishment for culpable homicide not amounting to murder)—*contd.*

by banging, hanged her on a beam by a rope and thereby caused her death by strangulation held that the accused was not guilty of murder or culpable homicide not amounting to murder but of grievous hurt only. 42 M. 547; 37 M. L. J. 17; 1919 M. W. N. 340 F.B.

—where the husband asked for pan and the wife refused pan and threw dirty water in his face whereupon the husband beat her with a stone and killed her held that the refusal to give pan was liable to make the husband angry but the throwing of dirty water in the face caused him to lose control of himself and would be and therefore the offence was not homicide not amounting to murder. 17 I. C. 164.

his wife on finding her in illicit intimacy with another person, the offence was committed under grave and sudden provocation and conviction should be under s. 304 part 1 I. P. C. 10 Lab. L. J. 508; 30 Cr. L. J. 481; 115 I. C. 476.

—where the intriguer with the wife of the accused was caught bold of and beaten and had his arms and legs broken and died 3 days after, conviction was altered from murder to one under s. 304 I. P. C. 28 C. 571; 5 C. W. N. 708; similar offence in case of the murder of a thief 5 N. W. P. 235.

—causing death by inflicting grievous hurt is punishable under s. 304 I. P. C. 44 A. 302; 18 A. L. J. 224.

—a snake-charmer exhibited in public a venomous snake whose fangs he now had not been extracted, and to show his own skill and dexterity, but without any intention to cause harm to any one, placed the snake on the head of one of the spectators; when the spectator tried to push off the snake he was beaten and died in consequence, held that the snake-charmer was guilty under sec. 304 I. P. C. and not under s. 302. 5 C. 351, 4 Cr. L. J. 580.

—where the accused by a superstitious belief made an offering of the child to a crocodile in a tank he was guilty of the offence under the last clause of sec. 304 as what he did he did with the knowledge that his act would result in the death of the child. 33 C. L. J. 179; 25 C. W. N. 676.

—where in the midst of a quarrel a man was abused by his sister-in-law and struck her with a stone causing her death, held that he acted on the impulse of the moment and could be convicted only under s. 304 I. P. C. 81 I. C. 390; 25 Cr. L. J. 800; 1925 All. 4.

—where the accused were not likely to know that the deceased or any one was within a *choupal* to which they set fire in a riot, held that the conviction under s. 304 was wrong. 82 I. C. 54; 25 Cr. L. J. 1190.

—where the injuries were inflicted on non-vital parts of the body and the deceased died as the result of septic poisoning the accused can be convicted only of an offence punishable under the second part of s. 304 I. P. C. 77 I. C. 889; 25 Cr. L. J. 489; 1924 Rang. 212.

S. 304. (Punishment for culpable homicide not amounting to murder)—contd.

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1929 Pat. 65 : 114 I. C. 222 : 9 Pat. L. T. 826 : 30 Cr. L. J. 276

—where the accused is charged under s. 304 read with
s. 150 I. P. C. of having engaged or employed a particular person
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27 Punj. L. R. 430 : 8 Lah. L. J. 455.

—when the several persons jointly attacked the deceased they
were all equally guilty even though it may not be possible to prove
which of them actually inflicted the fatal blow. 73 I. C. 769 :
24 Cr. L. J. 673.

—joining with another to assault a third person even though
the original intention may be merely to inflict harmless injuries
and seeing his companion in the course of an action which may
reasonably be expected to bring about the death of the deceased and

S. 304. (Punishment for culpable homicide not amounting to murder)—contd.

lathi causing no less than five fractures, his act leads to the inference that he knew that the injuries would likely result in death. 1923 Lah. 516.

—but where it was shown that the accused person had no knowledge that the deceased's spleen was diseased, he could only be convicted of causing simple hurt for causing simple injuries. 72 I. C. 533 : 24 Cr. L. J. 221.

—the appellants were convicted under s. 304—149 I. P. C. and also under s. 325—149 I. P. C. though s. 304 is graver of the two

illegal in the face of the conviction under s. 304—149 as the major offence included the minor. 26 P. L. R. 648 : 7 Lah. L. J. 368 : 1925 Lah. 539.

—when a person pleads guilty to a charge of murder, he adds that he did it out of jealousy a conviction should take place only after hearing all the evidence, as some ground may be seen for applying s. 304 I. P. C. 23 A. L. J. 587.

—a person can be convicted under s. 304 (1) I. P. C. in a murder trial, only if one of the exceptions to sec. 300 is proved. 26 I. C. 826 : 26 Cr. L. J. 890.

—a conviction under s. 325—149 is not legal in the face of the conviction under s. 304—149 because the major offence includes the minor offence 26 Punj. L. R. 648 : 7 Lah. L. J. 368 : 1925 Lah. 539.

—where a person was struck down with a heavy weapon and then dragged into the house, but thereafter nothing was known about him or his body, the accused should be convicted under s. 323 and not under s. 304. 92 I. C. 451 : 27 Cr. L. J. 275 : 26 Punj. L. R. 642.

—where a person is convicted under s. 304 Part II there is no common intention as the common intention is to cause death. I. C. 718 :

—the first part of s. 304 applies where there is guilty intention and the second part applies where there is no such intention but there is guilty knowledge. 35 C. W. N. 456 : 1931 Cal. 345 : A. I. R. 1931 Cal. 404 : 130 I. C. 884 : 1931 Cr. O. 409.

—where there was a dispute between two girls and the elder gave a blow to the younger with a lathi while the uncle of the younger girl gave one blow on the thigh of the older girl and two more blows on her thigh and she died, the accused was guilty under s. 304 para 2 and not under s. 302. 1928 Pat. 169 : 7 Pat. 638 : 106 I. C. 433 : 9 Pat. L. T. 286 : 29 Cr. L. J. 17 : 9 A. I. Cr. R. 330.

S. 304. (Punishment for culpable homicide not amounting to murder)—contd.

under s. 304 Part II I. P. C. J. 131-100 I. C. 718 28 Cr. commoo intention cannot Part II which expressly excludes intention. 60 I. C. 475: 20 Cr. L. J. 827: 1925 Cal. 913

S. 304 A. (Causing death by negligence).

—where a girl of 17 years of age being tired of her husband's constant ill-treatment attempted to commit suicide by jumping into a well having no consciousness that her child was on her neck and the child died though she survived, held that she was only guilty under sec. 304 A. 27 Bom. L. R. 604: 1925 Bom. 310-87 I. C. 1840: 26 Cr. L. J. 1016.

—where a woman administered love potion to her husband causing his death without knowing the effect of drug supplied to her she is not guilty of murder under s. 302 but is only guilty under this sec. along with other persons who supplied the drug, 77 I. C. 801: 25 Cr. L. J. 449: 1924 Pat. 13, 17 Bom. L. R. 217, 16 C. W. N. 1055 and if she had knowledge of the poisonous effect of the substance she would be guilty under s. 302, 16 C. W. N. 1055.

—the accused who is arraigned with negligence cannot claim the benefit of an error of judgment when he exercised none. 1925 S. 233.

—where in a charge of murder the S. J. disagrees with the verdict of the jury in favour of the accused, it is open to him to convict the accused under s. 304 A. 26 Bom. L. R. 610

—s. 304 A, I. P. C. does not apply to a case in which there has been the voluntary commission of an offence against the person. 4 C. 764

—in case of death caused by the rupture of the spleen occasioned by blows inflicted by the accused, to punish him under s. 304 A, the jury must be satisfied that the accused was aware of the risk to life involved in striking a person afflicted with that disease. 4 C. 815.

—if a person intentionally commits an offence and consequences beyond his immediate purposes result, the result is not to be attributed to mere rashness, if knowledge cannot be imputed, still the wilful offence does not take the character of rashness because its consequences have been unfortunate, but acts probably or possibly involving danger to others which in themselves are not offences, may be offences within s. 304 A and kindred sections if done without due care to guard against dangerous consequences. 38 C. 855: 15 C. L. J. 512.

—the words "rash and negligent act" in sec. 304 A, I. P. C.

S. 304 A. (Causing death by negligence)—*contd.*

Impose a greater punishment when hurt or grievous hurt is the result of such rashness or negligence. Section 304 A. provides for the cause of death by such rash or negligent act under circumstances not amounting to culpable homicide. 36 C. 302; 13 C. W. N. 362; 9 C. L. J. 204.

—criminal rashness is hazarding a dangerous or wanton act with the knowledge that it is so and that it may cause injury but without any intention to cause injury or without the knowledge that it will be probably caused. The criminality lies in doing such an act recklessly or with indifference as to consequences. Criminal negligence is the gross and culpable neglect or failure to exercise reasonable and proper care and precaution which it was the imperative duty of the accused to have adopted having regard to the circumstances of the case. 53 C. 333; 30 C. W. N. 66; 1925 Cal. 300; 91 I. C. 889; 27 Cr. L. J. 153.

—dragging a boy by the neck with sassa resulting in death constitutes an offence under s. 357 and not under s. 304 A. 1931 Lsh. 275; 1931 Cr. C. 531.

—s. 304 A. refers to rash or negligent act and does not apply to cases where hurt is voluntarily caused. 2 Bom. L. R. 613.

—s. 304 A. does not apply when injuries are inflicted neither rashly nor negligently but intentionally and designedly. 14 Bom. L. R. 887.

—to punish under this sec. the death should have been the direct result of a rash and negligent act of the accused, and that act must be proximate and efficient cause without the intervention of another's negligence. 4 Bom. L. R. 679.

—if the proximate cause is negligence of the accused, the presence of another and contributory cause is no defence. 1925 Sind. 233; 18 S. L. R. 199.

—where a *kadraj* operated an internal pilea with an ordinary knife and the patient died of hæmorrhage, he was, under the circumstances, rightly convicted under s. 304-A I. P. C. with causing death by doing a rash and negligent act. 14 C. 566.

—where collision between trains took place owing to an imperfect certificate of line clearance written by the Station Master but used by the guard in giving signal without the knowledge of the former, held that the act of Station Master did not in itself endanger the safety of other persons and that the effect was too remote to be attributable to such a cause. 32 C. 73; 8 C. W. N. 645.

—where the lessee of a Govt. ferry allowed an unsound boat to be used and owing to its unsoundness the boat sank and some of the persons in it were drowned, held that the lessee was properly convicted under s. 304 A, I. P. C. 16 A. 472.

—the conduct of a motor driver deviating while coming across a stationary tram car and in the act of crossing without blowing the horn, accelerating the speed, amounts to culpable negligence. 1928 Bom. 208; 111 I. C. 657; 29 Cr. L. J. 897; 30 Bom. L. R. 655.

S. 304 A. (Causing death by negligence)—*contd.*

—rash driving of motor car running against persons and causing serious injuries ultimately resulting in death, constitutes offence under Ss. 304 A and 337 I. P. C. 1929 M. W. N. 395.

—where the accused received a powder from an enemy of her relative and without taking precaution to ascertain whether it was noxious, mixed it with food believing that by doing so she would become rich, she was properly convicted under s. 304A I. P. C 31 A. 290; 6 A. L. J. 203.

—where an unqualified compounder dispensed strychnine hydrochloride instead of quinine hydrochloride causing death of some patients he was rightly convicted under s. 304 A, 42 A. 272; 18 A. L. J. 160.

—s. 304 A is not intended to cover cases where there is no intention to cause hurt. 3 A. L. J. 394.

—where death is caused by accident s. 80 I. P. C. protects the accused. 3 A. L. J. 678.

—a person killing another in the act of unloading a pistol which he knew to be loaded is guilty of causing death by negligence. 1930 Lah. 463; 1930 Cr. C. 531.

—where the accused with some companions went into a jungle to shoot pigs and there his companions proceeded to beat a pig and he fired at the pig he caused the death of the pig.

.....

—where death is caused by act being in its nature criminal s. 304 A has no application. 12 M. 56.

S. 306. (Abetment of suicide).

..... a Hindu widow in becoming a
..... of suicide as defined in
..... 1997, followed in 1928 Pat. 497;
..... 112 I. C. 363.

S. 307. (Attempt to murder),

—This sec. makes a distinction between an act of the
..... not be attended
..... s. 307. If he
..... must be deemed
..... the act, irres-
pective of its result, was done with intention or knowledge and under
circumstances mentioned in s. 307. 1930 Lah. 253. 1930 Cr. C.
287, 15 Bom. L. R. 991 *Dist.*

.....

S. 307. (Attempt to murder)—*confd.*

avoided a fatal result cannot reduce the gravity of the offence.
9 C. L. J. 432.

—in order to constitute the offence of attempt to murder under s. 307 I. P. C. the act committed by the prisoner must be an act capable of causing death in the natural and ordinary course of events.
4 Bom. L. R. 17.

—the only act which can fall within the purview of s. 307 is an act which is capable of causing death.
2 B. L. R. 15 Bom. L. R. 991:

—the act which is punishable under s. 307 must be an act which is itself capable of causing death. Pulling the trigger twice and aiming the gun at a person but with no result is not an offence under this sec. in the absence of proving that the gun was loaded.
2 Bom. L. J. 76: 1923 Rang. 251: 74 I. C. 1042: 24 Cr. L. J. 850

—where the accused in a dark night fired a revolver in order to keep guard and the shot was not aimed at any person in particular, he was not liable to be punished under s. 307. 9 Lah. L. J. 331: 109 I. C. 342: 1927 Lah. 853: 29 Cr. L. J. 518.

—where a young woman on account of constant ill treatment at home became desperate and jumped into a well with her child but was rescued and prosecuted, held that she was entitled to a lenient sentence under the circumstances and that the sentence of fine should be reduced to Rs. 5 and the sentence of imprisonment to the already undergone by her i.e., 6 weeks. 26 Punj. L. R. 581.

—the court can convict the accused persons of offences under s. 307 read with s. 34 or s. 114, although they are charged only with offences under ss. 307, 148 and 149 I. P. C. 26 Bom. L. R. 954: 1924 Bom. 502, 26 Bom. L. R. 323: 11 B. H. C. R. 240 Dist.

—where in a sudden fight in the heat of passion upon a sudden quarrel serious injuries are caused by both which would have resulted in their death if they did not receive early medical attendance neither party should be punished under s. 307. 2 Rang. 558: 84 I. C. 1049, 1925 Rang. 133: 26 Cr. L. J. 409.

—s. 511 I. P. C. does not apply to attempts to commit murder which are fully and exclusively provided for by sec. 307 I. P. C.
14 A. 33.

—an offence under s. 307 is committed when the accused does an act which must, in the ordinary course of events, cause death.
1931 Lah. 63: 1931 Lah. 329: 130 I. C. 649: 31 P. L. R. 1004: 1931 Cr. C. 143.

—a sentence of 14 years' transportation under this sec. is illegal. 7 W. R. Cr. 41.

—it is necessary to prove that the accused did not act with such intention and knowledge that if he had caused death by that act he would have been guilty of murder. 1923 Lah. 415.

—the evidence of the person stabbed may be the basis of conviction if the court thinks that the witness is telling the truth.
1929 M. W. N. 587.

S. 309. (Attempt to commit suicide.)

—where a woman in advanced stage of pregnancy being driven mad by prolonged labour threw herself into a well and a child was born dead, she was guilty under s. 309 and not under ss 312 and 511 I. P. C. 17 A. L. J. 478 : 50 I. C. 1003 : 20 Cr. L. J. 395.

—where a woman with the intention of committing suicide by throwing herself into a well, *ran to the well* and was arrested, her conviction under s. 309 I. P. C. was illegal. 8 M. 5.

—where the accused jumped into a well to avoid and escape from Police custody and when rescued came out of the well of his own accord, held that in the absence of the evidence that he jumped into the well to commit suicide he could not be punished under s. 309. 14 Bom. L. R. 146 : 14 I. C. 598 : 13 Cr. L. J. 246.

—where deaf and dumb person able to understand by signs attempted to commit suicide he was punishable under s. 309. 25 Bom. L. R. 43

S. 312. (Causing miscarriage.)

—the offence under this sec. can only be committed when a woman is in fact pregnant. 15 W. R. Cr. 4

—a woman is with child within the meaning of this sec. as soon as she is pregnant. 9 M. 369.

—s. 312 supposes an expulsion of the child before the period of gestation is completed. In a case in which the child was full grown the court declined to convict the accused of causing miscarriage under s. 312 but convicted him of an attempt to cause miscarriage under ss. 312 and 511 read together. 19 W. R. Cr. 32.

S. 314. (Death caused by act done with intent to cause miscarriage.)

—where the accused administered poisonous drugs to procure miscarriage and death resulted thereby he was punishable under this sec. though there was no proof that he knew that the drug would be likely to cause death. 10 W. R. Cr. 59.

S. 317. (Abandonment of child by parent or person having care of it.)

—this sec. applies when the child is exposed and no death supervenes, if death follows the conviction must be for murder. 2 A. 349.

—this sec. does not apply when the child is left under the care of others. 16 W. R. 12, 33 P. R. 1872, 4 P. R. 1879, 5 P. R. 1878.

—any person receiving an infant from its mother on the understanding that the mother never wished to have it back, must be regarded as a person having the care of it. 18 Bom. L. R. 934 : 41 B. 152 : 8 Bom. Cr. C. 217.

“expose or leave” is
“ordinary acceptance

of it, the idea of

S. 317. (Abandonment of child by parent or person having care of it)—contd.

—the gist of the offence is the exposure and leaving with the intention to wholly abandon. 24 M. 662, 4 P. R. 1879, 33 P. R. 1872, 23 A. W. N. 43, 18 A. 364.

—but where the child so abandoned dies from natural cause after some days the mother is not guilty. 13 A. W. N. 100.

—the child must die in consequence of the exposure. 10 W. R. 52.

S. 318. (Concealment of birth by secret disposal of dead body.)

—this sec refers to the disposal of a dead body secretly and does not meet the case of a person depositing a child alive in any place 1911 M. W. N. 379.

—it is sufficient if the body is temporarily concealed with the intention of removing it elsewhere when opportunity arises. 13 C. P. L. R. 188.

—it is sufficient to show that a child was born and it was sufficiently developed to have lived if born alive. 1 Bom. L. R. 155.

—the mere leaving of the body where the birth took place, did not constitute an offence as it did not amount to a secret disposal. 1 N. L. R. 89, 5 C. P. L. R. 29 diss.

—concealment of the birth of a foetus four months old is no offence, 4 M. H. C. Ap. 63, but if the foetus is six or seven months old its concealment is an offence. Cr. Rul. 55 of 1894, Rat. Un. Cr. 727, 1 Weir, 334.

—under seven months the great probability is that the child would not be born alive. 2 C. P. L. R. 153.

S. 319. (Hurt).

—an act neither intended nor likely to cause death is "hurt" even though death results in consequence. 18 W. R. 29 Rat. Un. Cr. 673; Cr. Rul. 38 of 1893, 157 P. L. R. 1913, 1 P. W. R. 1913, 8 W. R. 29, 5 W. R. 97, Rat. Un. Cr. 63, 1872, 2 A. 522, 3 A. 597.

—where an infatuated (foolish) young man administered *dhatura* under the impression that it was a love mixture there was no intention to cause hurt. The offence falls under s. 319 and not under s. 328 I. P. C. 21 A. L. J. 844; L. R. 4 A. 229 Cr.

S. 320. (Grievous hurt.)

—"emasculatation" means the depriving of a person of masculine vigour, castration. 22 P. R. 1878.

—where a girl's cheeks were branded with red hot iron causing scars of a permanent character it was "permanent disfiguration" within the meaning of this sec. 1 B. H. C. 101.

—fracture of kneecap, Rat. Un. Cr. 558; fracture of the arm 5 W. R. 12 is grievous hurt within this sec.

—remaining twenty days in the hospital is not sufficient, that during that time the person was unable to follow his ordinary pursuits must be proved. 19 B. 247.

S. 320. (Grievous hurt)—contd.

—where death is not intended nor the act is likely to cause death, it is simply grievous hurt though death is caused. 19 Bom. L. R. 902, 37 P. R. 1914, 109 P. L. R. 1912, 16 A. 766.

—wound on the neck with pen-knife is "dangerous to life" within cl. (8) of s. 320 I. P. C. and therefore grievous and the person inflicting such wound should be convicted under s. 326 I. P. C. even if death is caused thereby the wound becoming septic as a result of careless medical aid. 1930 Lah. 305; 31 Punj. L. R. 289; 11 Lah. L. J. 519; 120 I. C. 431; 1930 Cr. C. 337; 31 Cr. L. J. 77.

—blow or injuries aimed at one person but falling or inflicted on another causing death brings the offence within the definition of grievous hurt. 3 C. 623, 16 A. L. J. 615, 21 Bom. L. R. 1101.

—where death is caused by mutual stone-throwing it is grievous hurt. 19 B. L. R. 902.

—a person can be convicted for grievous hurt only when the
r 20 days and
I C. 838. 26

S. 321. (Voluntarily causing hurt.)

—s. 321 covers a case in which a man intending to aim a blow at one person strikes another. 2 C. L. R. 304 (307).

S. 322 (Voluntarily causing grievous hurt.)

—the offence of causing grievous hurt is not a minor offence or an offence involved in the offence under s. 304 read with sec. 149 I. P. C. 6 C. W. N. 98.

—person convicted of grievous hurt cannot be convicted of abetment thereof. 4 W. R. Cr. 37.

—when the accused knew that he would be smashing his victim's skull by his blow he must as well know that he was likely to cause the death of the victim. He should in that case be convicted for culpable homicide and not merely for grievous hurt. 1930 Bom. 483; 32 Bom. L. R. 1143.

S. 323. (Punishment for voluntarily causing hurt.)

—where different persons are injured, grievous hurt being caused in one case and simple hurt in others the court can impose a separate and a cumulative sentence. 37 A. 628.

—right of private defence should be considered. 2 W. R. 59.

—the right of the complainant under this sec. is a personal one and does not survive. 26 P. R. 1917, 25 P. R. 1919.

—where a bailiff is directed to give possession by a P. Small Cause Court, he can employ such amount of force as is necessary and will not be convicted under s. 323 I. P. C. 42 C. 313; 19 C. W. N. 273.

—but when in execution of a Civil Court decree for ejectment the accused accompanied by certain Civil Court officer entered a house and being resisted by a person in occupation of the house

S. 323. (Punishment for voluntarily causing hurt)—*contd.*

in setting up her own title forcibly removed her nut of the house they were liable to be convicted under s. 323 I. P. C. 34 C. W. N. 583 : 1930 Cr. C. 1120 : 1930 Cal. 720 : 127 I. C. 551 : 31 Cr. L. J. 1223.

—where there was no intention to cause hurt in connection with

under s. 323 in the absence of charge under that section. 87 I. C. 842 : 26 Cr. L. J. 1018 (c).

—where a Police constable is guilty of wrongful confinement, the accused is entitled to exercise his right of private defence and cannot be convicted under s. 323 for assaulting the constable. 85 I. C. 44 : 26 Cr. L. J. 428 : 1923 All. 34.

—a criminal prosecution under s. 323 I. P. C. does not abate by reason of the death of the person injured. 22 A. L. J. 520 : 25 Cr. L. J. 1007 : 81 I. C. 719, 44 M. 417 *fol.* 40 M. L. J. 351 : 1921 M. W. N. 227.

—where a constable pursuing some rioters wounded one of them by a gun shot whereupon the others assaulted him in snatching away the gun to prevent further harm being done, held at that stage they were only acting in defence and could not be guilty of an offence under s. 323 I. P. C., 1922 Lab. 75 : 71 I. C. 665 : 24 Cr. L. J. 201, 1923 A. 34.

—where the accused were tried for an offence under s. 325 for inflicting an injury to the knee-cap of the complainant and for no other offence, the appellate court is not justified in altering the conviction under s. 325 to one under s. 323 I. P. C. 72 I. C. 72 : 24 Cr. L. J. 312.

—separate sentences for rioting and hurt are legal where each person took an individual part in the assault. 40 C. 511.

—a sentence under s. 323 I. P. C. may be heavier than one punishable under s. 325. 97 I. C. 1053 : 27 Cr. L. J. 1229 : 1927 Nag. 49.

S. 324. (Voluntarily causing hurt by dangerous weapons or means).

—the object of the sec. is to make a simple hurt more grave and liable to a more severe punishment. 7 M. H. C. Ap. 11.

—when the injury caused is simple but is caused by a cutting weapon it comes under s. 324 and not under s. 326 I. P. C. 1930 Lab. 950 : 1930 Cr. C. 1046.

—the prosecution under this sec. does not abate on the death of the complainant. 25 P. R. 1919.

—the charge should state that the weapon used was one of the kind mentioned in the sec. 3 W. R. Cr. 15.

—causing hurt on grave and sudden provocation is not an offence under s. 324 I. P. C. 1 Bnm. H. C. R. 17.

S. 324. (Voluntarily causing hurt by dangerous weapons or means)—contd.

—where two factions were engaged in rioting and the accused inflicted certain blows on the other party and there was nothing to show that the injuries were not in self-defence or justified by extreme provocation, the conviction for hurt should be set aside.

—a charge and finding in case of consiag hurt under s. 324 I. P. C. need not contain a negation that the hurt was caused on grave and sudden provocation. 4 Mad H. C. R. Ap 5.

—rioting armed with deadly weapons and stabbing are punishable separately under ss. 148 and 324 I. P. C. 7 W. B. Cr. 60, 12 C. 495.

—separate sentences for rioting and grievous hurt are illegal,
16 C. 442 F. B.

—when the causing of hurt by some members of the assembly converts it into an unlawful one, separate sentences for rioting and causing hurt are illegal. 104 I. C. 454; 28 Cr. L. J. 838

S. 325. (Punishment for voluntarily causing grievous hurt).

—to make out the offence under s. 325 I. P. C. there must be some specific hurt, voluntarily inflicted and coming within some of the 8 kinds enumerated in s. 320. 23 W. R. Cr. 65.

—where the medical evidence shows that the assaulted
 + for more than
 + evidence either
 or that period or
 1931 Lab. 280.

—when a man has been struck on the head and a fracture caused to him, surrounding him and beating him with lath: is to cause hurt which endangers life. 104 I. C. 703; 28 Cr. L. J. 868; 1928 Pat. 46

—where blow is struck by A, in the presence of and by the order of B both are principals in the transaction. 23 W. R. Cr. 11.

—where several accused persons struck the deceased several blows one of which was fatal. The jury found that the defendant was not found who struck the deceased under s. 302 and not under s. 302.

40 A. 103; 16 A. L. J. 11.

—where the common intention of assailants was to attack the deceased and to cause grievous hurt and on the evidence it was not possible to attribute any particular injury to any individual assailant nor it could be said that any particular injury was the — the accused could

1929 Lah. 456 -
; 1929 Cr. C. 8.

ants dealt the blow
ed cannot be con-
mon intention o

S. 325. (Punishment for voluntarily causing grievous hurt)
—contd.

—assaulting the wife till she became unconscious and hanging her in the belief that she was dead is punishable under s. 325 18 C. W. N. 1279.

—but when the right of inflicting, sentence under

—where all that the evidence showed was that the person attacked remonstrated with the accused and others for diverting the course of an old water channel which led to a quarrel and that the other with a stick, it cannot be provocation, 6 L. L. J. 424.
 resulting in death from gangrene 302: 18 A. L. J. 224.

—where the accused gave a man a severe beating but no bones were broken while it appeared that death supervened owing to some internal trouble which was unforeseen, a sentence of three years' rigorous imprisonment was sufficient. 1930 M. W. N. 74: 123 I. C. 43: 31 Cr. L. J. 477.

—where the accused beat a person suspecting to be a thief and without any intention to kill him, the accused could not be convicted under s. 308 but was guilty of an offence under sec. 325. 102 I. C. 907: 28 Cr. L. J. 619.

—where the accused in a fit of temper losing self-control inflicted a blow with a dang on the uncovered head of the deceased held that the accused had no intention to cause the death and the case fell within the purview of sec. 325 instead of sec. 302. 1929 Lab. 863: 1929 Cr. O. 639.

—a person charged with an offence under s. 147 and with offences under ss. 304, 325 and 323 read with s. 149 I. P. C. cannot in the event of the charges not being made out, be convicted of an offence under s. 325 I. P. C. 11 C. W. N. 666.

—where there were 3 persons on the side of the appellants and only two on the side of the deceased who accidentally received injuries on the head, it is not clear and subsequently appellants were the first to attack. They committed an offence. Leh. L. J. 589: 67 I. C. 817:

—where the accused committed a grievous assault by an between person who n and those who did

—sentences for hurt and grievous hurt on the same facts are illegal. 24 W. R. Cr. 46.

—for an offence under this sec. a sentence of fine only is illegal. 26 P. L. R. 252.

—sentence of fine only is illegal. 2 W. R. Cr. 32.

S. 326. (Voluntarily causing hurt by dangerous weapons or means).—*contd.*

alleged motive was not convincing and the common object was not made out, held this does not prevent a conviction being bad under s. 326 I. P. C. if grievous hurt was caused. 74 I. C. 717 : 24 Cr. L. J. 813.

—conviction under sec. 326 read with s. 34 is legal even in the absence of a specific charge in the original charge under these secs. 1929 Pat. 11 : 113 I. C. 676 : 30 Cr. L. J. 205.

—where the court had been able to make up its mind definitely about the actual persons who caused the injuries and there was delay in making the complaint, a conviction cannot be sustained. 1923 Lah. 447.

S. 327. (Voluntarily causing hurt to extort property)

—torture by means of stinging nettles, the effect of which was to extort property, would properly come under s. 327 I. P. C. 18 W. R. Cr. 8.

S. 328. (Causing hurt by means of poison etc. with intent to commit an offence).

—the words 'or other thing' in s. 328 I. P. C. must be referred to the preceding words and are to be taken to mean 'unwholesome or other thing', not other thing simply. 1 W. R. Cr. 7.

—where the evidence that the accused administered poison is merely circumstantial, the evidence must be such as to eliminate all reasonable possibility of the poison having been administered otherwise than by the accused. 77 I. C. 981 : 25 Cr. L. J. 517.

—offence of administering deleterious drugs, when life is not endangered, is punishable under s. 328 and not under s. 326 I. P. C. 4 W. R. Cr. 4.

... .. to be shown that
... .. to commit
... .. to be likely

S. 330. (Voluntarily causing hurt to extort confession or to compel restoration of property).

—instigation necessarily connotes some active suggestions or support or stimulation to the commission of the act itself. 25 A. L. J. 149 : 100 I. C. 537 : 28 Cr. L. J. 313 : 1927 All. 730.

—a charge may be made under s. 330 I. P. C. even if the supposed offence has not been committed. 20 W. R. Cr. 41.

—under s. 330 it must be proved that the hurt to the complainant was caused with intent to extort a confession of some offence or misconduct punishable under the I. P. C. 13 W. R. Cr. 23.

—where several persons were all concerned in a case of torture and were prosecuting a common object, each was guilty as a principal and not as an abettor of others. 7 W. R. Cr. 3.

S. 331. (Voluntarily causing grievous hurt to extort confession or to compel restoration of property).

—under this sec the word "demand" must be with respect to property. Consequently the extortion of a promise to restore an abducted woman is not an offence under the section 5 Lah. L. J. 375 : 73 I. C. 279 : 24 Cr. L. J. 576.

S. 332 (Voluntarily causing hurt to deter public servant from his duty).

—where a public servant is acting in the legitimate discharge of his function and is hurt, the offender is guilty of one of the special offences relating to public servants. But when the public servant is acting *bona fide* but not in the legitimate exercise of his public functions he can be guilty only of causing hurt or assault. 83 I. C. 899 : 26 Cr. L. J. 195.

—an offence to be punishable under s. 332 or 333 I. P. C. requires as an ingredient the presence of an intention on the part of the accused to prevent or deter a public servant from discharging his duty. 22 A. L. J. 501 : 1924 All. 645 : 85 I. C. 245 1924 All. 645 : 26 Cr. L. J. 531.

—arrest without warrant though warrant has been issued cannot be justified. 4 C. L. J. 92, 3 C. W. N. 605.

—when the order of the M. has ceased to have effect, a constable in carrying the order cannot be said to be acting in the discharge of duty imposed by law. 40 A. 28, 718, 15 A. L. J. 813

—where blow was struck with an umbrella to the public servant an offence under this sec. was committed 24 W. R. 67.

—where a police harassed a person during an investigation and the latter consequently threw himself into a well and his sympathisers among whom were the accused attacked the police there was no question of grave and sudden provocation and the accused were rightly convicted under s. 332 though the position of the accused would be quite different if the assault on the police had been made when the actual harassment went on 1929 Lah. 739 1929 Cr. C. 329 : 11 Lah. L. J. 287.

—in the case of a scuffle a small fine is quite sufficient to meet the ends of justice. 18 P. R. 1910, 7 M. L. T. 886.

—the words "in the discharge of his duty as such public servant" in the earlier portion of the notice mean in the discharge of a duty imposed by the law on such public servant in the particular case, and do not cover an act done by him in good faith under colour of his office. 18 A. 246, 57 A. 353 : 13 A. L. J. 439 : 15 A. L. J. 565.

—to constitute an offence under the section the public servant must be acting in the discharge of his duty as such public servant. 13 A. L. J. 439 : 15 A. L. J. 565.

—in the legitimate exercise of his public function the accused can be guilty only of causing hurt or assault. 83 I. C. 899 : 26 Cr. L. J. 195.

S. 332. Voluntarily causing hurt to deter public servant from his duty).—*contd.*

—where the authority to make search is invalid resistance is not punishable under the sec. 38 A. 14.

—separate sentences under ss. 148, 152, 332 and 333 are illegal. 19 C. 105.

S. 333 (Voluntarily causing grievous hurt to deter public servant from his duty).

—assaulting a police officer when he is discharging his duties as such, amounts to an offence under s. 333 I. P. C. 18 S. L. R. 221: 88 I. C. 15: 26 Cr. L. J. 1071.

—as the chowkidars were not members of the police force and had no authority to arrest, rescuing from their custody is not an offence under this sec. 14 A. L. J. 789.

—where a constable who was pursuing certain rioters fired a gun and seriously injured one of them without any justification for so doing and the men turned round and snatched away the gun and threw it away they must be considered to have acted in the exercise of private defence and cannot be convicted under s. 333. 71 I. C. 665: 24 Cr. L. J. 201: A. I. R. 1922 Lah. 75.

S. 334. (Voluntarily causing hurt on provocation).

—causing hurt so grave and sudden provocation to the person giving the provocation is chargeable as an offence under s. 334 and not under s. 324 I. P. C. 1 Bom. H. C. R. 17.

—where the accused met with great provocation they could hardly be blamed for giving the would-be thief a sound beating. 17 P. L. R. 1915: 27 I. C. 559: 16 Cr. L. J. 175.

—it would be wrong to say that no offence is committed by one who strikes a blow under provocation. 94 I. C. 142: 27 Cr. L. J. 574.

S. 335. (Voluntarily causing grievous hurt on provocation).

—causing grievous hurt on grave and sudden provocation by throwing stones but without any intention or knowledge that grievous hurt would be caused, is not punishable under this sec. 4 W. R. Cr. 21.

—when a person who by a single blow with a deadly weapon kills another entering at dead of night into a dark room when he and his wife were sleeping in separate beds, for the purpose of having criminal intercourse with her, he is guilty under this sec. 3 W. R. Cr. 55.

—where the accused was convicted of causing grievous hurt, viz., cutting of nose, to his wife under grave and sudden provocation and was sentenced to suffer rigorous imprisonment for four months, the sentence was enhanced to one of two years' rigorous imprisonment. 17 Bom. L. R. 68: 16 Cr. L. J. 168: 27 I. C. 552.

S. 336. (Act endangering life or personal safety of others).

—to constitute an offence under this sec. the act of endangering the personal safety of others should be *knowingly done*. 5 C. W. N. 376.

—when the accused a person in charge of a temple removed a light placed near a well, under the order of the Police Officer, and a boy fell down into the well, he committed an offence under this sec. 18 C. W. N. 1176: 16 Cr. L. J. 131, 27 Ind. C. 195.

—where the accused deliberately threw bricks at a temple hoping to cause a riot, held that as he desired certain result to follow there was neither rashness nor negligence in the act and he was not guilty under s. 336 I P C. 1928 All 745: 27 A. L. J. 175: 29 Cr. L. J. 1088: 112 I C 592.

—where the accused while driving one night without wearing spectacles as he was asked to do when taking the license, collided with another car his conviction under s. 336 was set aside on the ground that it was not made out that if the accused drove the car without wearing spectacles it would be acting so rashly and negligently as to endanger human life or the personal safety of others. 42 B. 396: 20 B. L. R. 376.

—the cause of an accident to a motor car due to the negligent and reckless driving of another motor car should be tried within a week. 1929 Cal. 776. 1929 Cr. C 520.

S. 337. (Causing hurt by acts endangering life or personal safety of others.)

—causing of hurt by negligence in the use of gun would fall within the provision of this sec. rather than s. 286 I P C. 28 A. 464. 3 A. L. J. 332.

—where the accused administered to her husband without any care or caution or enquiry, an unknown powder (*dhatura*) received from her lover, who was at enmity with her husband, she was guilty under this sec. 19 Bom. L. R. 51: 4 Bom. Cr. C. 1.

uppe	operation on the
eye.	the complainant's
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	84.

which was intended to be shot and hit at the leg of a member of the party the shot was purely accidental. 1931 Lah. 54: 130 I. C. 654: 31 P. L. R. 955: 1931 Cr. C 118.

S. 338 (Causing grievous hurt by act endangering life or personal safety of others).

—where the accused a fully developed man caused the death of his child wife who had not attained puberty, having sexual intercourse with her, he was guilty under this sec. 18 C. 49.

S. 338. (Causing grievous hurt by not endangering life or personal safety of others)—*contd.*

—where the complainant's father who was an old deafman was knocked down by the carriage of the accused though the driver shouted out to warn foot passengers, the accused was not guilty under this sec. 6 Mad H. O. R. Ap. 31.

—where the accused when driving a motor lorry on the correct side of the public road at moderate speed run over a boy who was crossing the road and there was no evidence to show that he could have avoided the accident, he could not be convicted of an offence under s 338 I. P. O. 32 O. W. N. 612; 115 I. O. 96; 30 Cr. L. J. 402.

—where the accused who owned a paddy field in a jungle tract discharged a gun in the direction of a footpath and wounded the complainant in the leg which had to be treated in the hospital and amputated, he was guilty of culpable negligence and was liable to be convicted under s 338 I. P. O. 32 O. W. N. 612; 115 I. O. 96; 30 Cr. L. J. 402.

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S. 339. (Wrongful restraint).

—this sec. relates to the voluntary obstruction by a person. 9 Bom. L. R. 30; 5 Cr. L. J. 97; 34 M. 547; 11 Cr. L. J. 708; 9 M. L. T. 103.

—It is wrong to obstruct a person from passing or going in any direction. 11 Cr. L. J. 708; 9 M. L. T. 103. It is wrong to obstruct a person from passing or going in any direction. 11 Cr. L. J. 708; 9 M. L. T. 103.

—restraining a person from passing or going in any direction. 11 Cr. L. J. 708; 9 M. L. T. 103. It is wrong to obstruct a person from passing or going in any direction. 11 Cr. L. J. 708; 9 M. L. T. 103.

—to constitute the offence the obstructor must intend or know or have reason to believe it to be likely that the means adopted would cause the obstruction to the complainant. Physical presence of the obstructor is not necessary as an ingredient of the offence. 34 M. 547; 9 M. L. T. 103; 11 Cr. L. J. 708; 8 Ind. O. 757.

—but the obstruction must be physical; verbal prohibition or remonstrance does not amount to such obstruction. 1 Weir 339.

—to constitute the offence it must be found that the complainant had a right to proceed along the path and that he was obstructed from doing so. The ploughing up of a path does not amount to an obstruction within the meaning of sec. 339. 30 I. O. 749; 16 Cr. L. J. 701; 2 L. W. 1035.

—locking up of a house under a bona-fide claim is no offence. Cr. Rul. 13 of 1889, nor any act done in good faith under a belief that it is justified by law is an offence. 24 C. 885; 1 C. W. N. 665; 34 M. 547; 47 C. 818; 5 P. W. R. 1914; 34 P. L. R. 1914; 15 Cr. L. J. 512; 24 Ind. O. 844; 12 B. 377.

S. 339. (Wrongful restraint)—*contd.*

—locking up a tenanted house by a joint owner is not an offence under this section. 20 Bom. L. R. 106 : 4 Bom. Cr. C. 451.

—to obstruct a co-owner from using a mot to which he had yoked his bullocks on the steps of a well which existed for that purpose on the ground that he had not paid his share of expenses of the well, constitutes wrongful restraint under s. 341 I. P. C., 27 Bom. L. R. 1419.

—there is authority for the view that s. 339 protects the obstruction to any person only and does not cover a case where a person having right to proceed in a direction is free to proceed but without any impediments that he may have with him. But this view of personal obstruction must obviously have some limits. 27 Bom. L. R. 1419.

—an emigrant agent or his watchman restraining a person from going out of the depot is guilty under this sec. 21 M. L. J. 439 : (1911) 1 M. W. N. 369 : 42 Cr. L. J. 212 : 10 Ind. C. 107.

—an accused charged under s. 341 I. P. C. should clearly raise the defence that he was entitled to the exception to sec. 339 I. P. C. Where obstruction was put up in good faith because the accused believed himself to have a lawful right to obstruct the complainant from going along a passage he is not guilty of wrongful restraint under s. 341 I. P. C. 41 C. L. J. 633 : 30 C. W. N. 1921 : 1925 Cal. 1214.

—a police officer arresting a person guilty of a non-cognizable offence without a warrant commits an offence of wrongful restraint or wrongful confinement within ss. 339, 340 and 342 if he is not protected by ss. 81, 96, 97 and 100 to 105. 44 M. L. J. 655 : 46 M. 605 F. B.

—a private citizen has the right to arrest under the common law any person as to whom there is apprehension that he would commit a breach of the peace. 44 M. 913 : 3 Pat. L. J. 129.

—the accused can claim benefit of exception to sec. 339 I. P. C. in revisional stage for the first time. 30 C. W. N. 192 : 41 C. L. J. 633 : 1925 Cal. 1214.

S. 340. (Wrongful confinement.)

—a landlord restraining a tenant holding over, from entering into the house is guilty under this sec. 21 Bom. L. R. 261 : 5 Bom. Cr. C. 15 : 43 B. 531.

—when there is no desire to proceed or where the confinement is consented to by the person affected, there is no offence. 36 P. R. 1894, nor when escape is open. 4 C. W. N. 105 (note).

—wrongful confinement for the purpose of extortion. 27 C. 925 : 4 C. W. N. 755.

—malice is not an essential element in the offence of wrongful confinement as defined by s. 340 I. P. C. The offence is complete in a manner as to the circumstances, limits, voluntarily obstructive direction in which

S. 340. (Wrongful confinement)—contd.

he has a right to proceed. The mere circumstance that the accused had acted without malice and to the best of his judgment did not protect him, if his act otherwise satisfied the definition of sec. 340 I P. C. 13 B. 376.

—overpowering or suppressing in any way the voluntary movement of any person by force of an exterior will is wrongful confinement. 2 M. H. C. 396.

—where the police took a person into custody for not obeying to an improper order, 1 Weir 342, where a jail doctor confined an offender in a cell for the purpose of administering enema against his will, 30 C. 95 : 6 C. W. N. 511, where a woman was kept in a house the entrance to which was guarded and a watch was kept over her movement, 42 B. 141 : 20 Bom. L. R. 79, there was wrongful confinement.

—when the arrest is legal or under an order of the court there is no offence. 10 B. 509, 30 M. 179.

—where by reason of a mistake of fact and not of law, in good faith he bound by law to obey the order of Police in sending a Head Constable guilty of wrongful confinement. 47 C. 818.

—an officer arresting a Jt. Dr. under a warrant which directs him to produce the Jt. Dr. when arrested before the court with intent to confine him if having power to do so, he confines him in the exercise of his duty.

Ss. 341, 342. (Punishment for wrongful restraint and wrongful confinement).

—while convicting an accused person for wrongful restraint by the erection of a hut or similar act of obstruction, the M. cannot order the removal of the hut or other obstruction. 31 C. 691 F. B. 5 C. W. N. 432 overruled.

—where the accused seized, dragged and pushed the complainant to a certain place in order to punish him, the case fell within the second para of sec. 71, 4 C. L. J. 90, so also where wrongful confinement was the common object of an unlawful assembly and that was the essential ingredient of the offence under s. 147, a separate sentence for wrongful confinement is illegal. 1 Cr. L. J. 365.

—all members of the public have equal rights in using the public streets and any one causing obstruction is liable. 50 M. 673 : 1927 M. W. N.

—arresting a person found near the Railway overbridge without ticket, without accepting the explanation offered, was found guilty under s. 342 I. P. C. 33 C. W. N. 751 : 1929 Cr. C. 366 : 1929 Cal. 730.

S. 341, 342. (Punishment for wrongful restraint and wrongful confinement)—*contd.*

—prevention of the intending emigrant from leaving the Emigration Depot by watchman is wrongful restraint within this sec. 21 M. L. J. 439 10 I. C. 107: 12 Cr. L. J. 212: 1911 M. W. N. 369.

—voluntarily obstructing any person from entering upon the land under *bona-fide* colour of title and possession is not such an obstruction as can be made the subject of criminal prosecution under s. 341 I. P. C. 34 P. L. R. 1914: 5 P. W. R. 1914: 24 L. C. 844: 15 Cr. L. J. 532.

—where the accused was convicted under s. 341 I. P. C. for wrongfully restraining the complainant, his tenant, from going to a certain urinal, the conviction could not stand unless the complainant had a right to use the urinal 34 C. W. N. 582. 1930 Cal. 760: 127 I. C. 554: 31 Cr. L. J. 1226: 1930 Cr. C. 1160.

—the fact that the complainant was absent at the time the obstruction was put up cannot be a ground for non-application of the section. 29 Bom. L. R. 494 1927 Bom. 369: 106 I. C. 111: 28 Cr. L. J. 1024.

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of her tenant.
Cr. L. J. 351.

—s. 341 covers the case of a person who reasonably wants to go vertically upwards if he has a right to do so and is prevented from so doing by voluntary obstruction 29 Bom. L. R. 494: 1927 Bom. 369: 106 I. C. 111: 28 Cr. L. J. 1024.

—under the Common Law of England it is clearly established to whom there is to commit a breach be applied to India y implication abroad when a drunken and disorderly person who was committing assaults on others was seized, tied up and taken to the police station by a private citizen. 44 M. 913: 61 I. C. 652: 22 Cr. L. J. 412: 14 L. W. 189.

—where all the accused were charged under s. 342 I. P. C. and were acquitted under that sec. the conviction of some under

So. 341, 342. (Punishment for wrongful restraint and wrongful confinement)—*contd.*

s. 368 I. P. C. was unsustainable and the error in the procedure could not be cured by s. 537 Cr. P. C. 33 C. W. N. 891 : 1929 Cr. C. 479 : 1929 Cal. 767.

—a police officer is not liable for arresting a wrong person in good faith under a warrant. 26 Bom. L. R. 138 : 7 Bom. Cr. C. 128 : 25 Cr. L. J. 797, 13 B. 376 *Dist.*

—where a person was wrongfully confined by a Police Officer the offence falls under s. 342. 34 C. W. N. 556 : 1930 Cal. 711 : 128 I. C. 208 : 1930 Cr. C. 1111.

—where all that was proved was that a woman was wrongfully confined but her whereabouts were not concealed from her relations, the accused cannot be convicted under s. 365 I. P. C. but can be convicted under s. 342 I. P. C. 7 L. L. J. 520 : 26 P. L. R. 733 : 1925 Lah. 614.

—a ferryman detaining passengers for realising tolls is punishable under s. 341. 4 C. W. N. 348 : 27 C. 317.

S. 343. (Wrongful confinement for three or more days).

—separate sentences under ss. 342 and 343 are illegal. W. R. Cr. 21 (Gap no)

—the accused took away a married woman of 16 years of age from her father's house and kept her in wrongful confinement that the girl had not been accused were not guilty under 1923 Lah. 274.

S. 344. (Wrongful confinement for ten or more days).

—the accused living in a large town chained up his brother who was subject to fits of insanity when he was dangerous; in one of his fits the accused chained the locatic with heavy chains from the end of March to 3rd July and the latter was brought before the Judge in fetters and found to be insane. The accused was rightly convicted under this sec. 45 A. 475 : 21 A. L. J. 391.

—fine alone is not a legal sentence for an offence under this sec. 1 Bom. H. C. R. 39.

S. 346. (Wrongful confinement in secret).

—to convict under this sec. it must be shown that the wrongdoer had an intention that he should not be known to be confined in case of restraint in 9 C. 221.

S. 351. (Assault.)

—intention is the gist of the offence. 3 L. B. R. 194.

—where one of the accused hit a constable on the face and the others surrounded him in a threatening attitude, the latter cannot be convicted for assault. 8 M. L. T. 118; 11 Cr. L. J. 483; 7 Ind. C. 416.

—there must be evidence to show that the accused was about to use criminal force to him then and there. 30 C. 97; 6 C. W. N. 342.

S. 352. (Punishment for assault or criminal force otherwise than on grave provocation).

—the expression 'in consequence of' includes the motive which actuates an assault as well as the cause of such assault. 99 I. C. 935; 1927 Lah. 182; 28 Cr. L. J. 199.

—a person tried and acquitted on a charge of using criminal force cannot be tried in respect of the same criminal matter on a charge of hurt. 7 B. L. R. Ap. 25; 16 W. R. 3.

—a person charged with having assaulted a public officer in the discharge of his duties, on failure of that charge, cannot be convicted of having assaulted a private individual, *viz.* a witness in the case. 6 C. W. N. 202.

—persons may commit riot without committing an offence under s. 352 I. P. C. and the theory that one embraces the other is fallacious. 39 M. L. T. 409.

—separate sentences under ss. 457, 426 and 352 I. P. C. are legal. 12 M. 36.

—where a Police Inspector attempts to search outside his circle and the inmates of the house assault him so as to prevent the search they are not guilty of an offence under this sec. 71 I. C. 996; 24 Cr. L. J. 276; 1923 A. 433.

—giving a slap on the cheek of a forest watcher executing an illegal warrant is a trivial offence for which the accused should not be convicted under s. 352 I. P. C. 51 M. 873; 55 M. L. J. 220; 109 I. C. 365; 29 Cr. L. J. 541; 1928 Mad. 624.

S. 353. (Assault or criminal force to deter public servant from discharge of his duties).

—an assault on a public servant executing a warrant though defective is punishable under this sec. A. W. N. 1885, 244, 28 C. 896, 3 P. L. J. 493, 8 A. 293, 5 A. W. N. 244, 1 Weir 344, 27 A. 391, 19 M. 349, 21 M. 295 *contrn.*, 1 C. W. N. 233, 18 A. L. J. 691, 7 N. W. P. 209, 3 P. L. W. 64, 8 M. L. T. 165; 11 Cr. L. J. 727; 11 Ind. C. 881, 13 A. L. J. 691; 16 Cr. L. J. 589; 30 Ind. C. 141, 3 Pat. L. J. 493, 46 M. L. J. 45; 1924 M. W. N. 50, 35 C. W. N. 228.

—a warrant is not valid if the term of the warrant has expired. 8, 31 C. 421. But not if the resistance of the person has expired.

S. 353. (Assault or criminal force to deter public servant from discharge of his duties)—*contd.*

—an assault of the public servant while doing unlawful or unauthorised act is not punishable under this sec. 8 C. W. N. 627, 5 C. W. N. 134; 28 C. 411, 8 A. L. J. 827, 24 C. 324; 1 C. W. N. 223, 27 C. 457; 4 C. W. N. 822, 3 C. W. N. 627, 47 M. L. J. 447, 17 M. L. J. 323, 1 Pet. L. J. 530, 2 Pet. L. J. 467, *contra*. 183 P. L. R. 1913; 19 P. W. R. 1913; 14 Cr. L. J. 141; 18 Ind. C. 891.

—when the accused approached a public servant as such with a prayer and on the latter expressing his inability to accede to the prayer the accused assaulted him, held that the accused was guilty of an offence under this section though the person assaulted was not acting as public servant when the assault was made. 99 I. C. 935; 1927 Lah. 162; 28 Cr. L. J. 199.

—assault of a Police officer during arrest of the accused in a cognizable case without warrant is punishable under this sec. 36 A. 6, 41 C. 836.

—assault of a police officer in a private place deputed by his superiors to control the traffic is an offence under this sec. as the police was acting in the lawful discharge of his duties. 1928 Lah. 230; 29 Cr. L. J. 905; 111 I. C. 665.

—a warrant of arrest containing wrong description is not valid and resistance to the execution thereof is punishable under this sec. 28 C. 399; 5 C. W. N. 413, 39 C. L. J. 452.

—the warrant of arrest must be shown, 5 C. W. N. 143.

—the warrant cannot be issued beyond jurisdiction. 39 C. L. J. 33.

—to apply this sec. the public servant must be acting in execution of his duty as such public servant, mere good faith will not do. 35 C. 361, 28 C. 411; 5 C. W. N. 134, 18 A. 246, 325 P. L. R. 1913, 31 C. 424; 1 Cr. L. J. 442, 9 B. 558, 38 P. W. R. 1914.

—assaulting a public servant when making a search, 41 C. 261, or giving delivery of possession, 18 C. W. N. 548, or surveying the accused's land under the act of 1880, 18 C. W. N. 548.

Mad. 1092.

—resistance to a Revenue Inspector in restraining property of the accused for arrears of revenue is an offence under this sec. although the warrant of distraint was addressed to the village headman and not to the Revenue Inspector. 46 M. L. J. 290; 76 I. C. 962; 46 M. L. J. 45; 25 Cr. L. J. 290.

—resistance by the lessee of the defaulter of water-tax to distraint his property while the warrant authorises the distraint of the property of the defaulter, is not an offence under this sec. 47 M. L. J. 447; 1924 Med. 895; 20 L. W. 669; 83 I. C. 1007.

S. 353. Trial.

—no sanction is required for initiation of proceeding under this sec. 31 C. 664.

—a conviction under this sec. will not stand unless the warrant of attachment which the public servant was executing is produced or secondary evidence of it is given. 26 C. 630: 3 C. W. N. 603, 8 C. W. N. 605, 3 L. B. R. 128.

—an accused discharged under this sec. cannot be convicted of an offence of assaulting a private individual especially when there is no complaint. 6 C. W. N. 202.

—to substantiate a charge of assault on a particular person it is not enough to prove that the words used and the preparation made by the accused were calculated to cause that person to apprehend that criminal force would be used on him, if he persisted in a certain course of conduct: there must be evidence to show that the accused was about to use criminal force to him then and there. 6 C. W. N. 342: 30 C. 97.

S. 354. (Assault or criminal force to woman with intent to outrage her modesty).

—ever, . . . criminal force to a woman does . . .
tute an offence . . .
must be committed . . .
to outrage a . . .
outrage her . . .
28 Cr. L. J. 697.

—an offence under this sec. is committed only when the accused assaults or uses criminal force to a woman intending to outrage or knowing it to be likely that he will thereby outrage her modesty. Consequently when a woman has no modesty to mention or when it was not such as would be outraged by any of the acts attributed to the accused an offence under this sec. is not committed. 1928 Pat. 326: 29 Cr. L. J. 325: 108 I. C. 81.

—an accused is punishable under this sec. whatever may be the age of the woman, as a "woman" is defined in s. 10 as a female human being of any age. 14 Bom. L. R. 961: 1 Bom. Cr. C. 205: 13 Cr. L. J. 858: 17 I. C. 794.

—an indecent assault upon a woman is an offence under this sec. It is not rape unless the court is satisfied that the conduct of the accused indicated a determination to gratify his passions, at all events, and in spite of all resistance. 5 B. 403, 42 P. W. R. 1910: 11 Cr. L. J. 611: 8 Ind. C. 257, 16 P. W. R. 1912: 116 P. L. R. 1912: 13 Cr. L. J. 469: 15 Ind. C. 309.

—the allegations of the woman "the accused took off my cloths, threw me to the ground and then sat down beside me. He said nothing to me. He did not do anything more to me." constituted an offence under this sec. 116 P. L. R. 1912: 15 I. C. 309: 13 Cr. L. J. 469.

—where the accused caught hold of a woman by her arm and dragged her but on the woman raising a cry some of the neighbours

S. 354. (Assault or criminal force to woman with intent to outrage her modesty)—*contd.*

came and rescued her, held that in the absence of any evidence as to the intention of the accused he was guilty under ss. 354 and under sec. 366 I. P. C. 29 Puoj. L. R. 441. 29 Cr. L. J. 479 : 10 Lab. L. J. 325 : 109 I. C. 127 : 10 A. I. Cr. R. 207.

—pulling of a woman by arm with a request for sexual intercourse is an offence under this sec. 1 Weir 347

—a charge under the above section is one which is very easy to make and very difficult to rebut and also one which experience shows women sometimes are apt to make from one motive or another as in the *above case* foundation to independent evidence, circumstances and pro-
1 U. B. R. 1892-1896,

—the fact that A is in love with B and is jealous of C, does not authorise him to pull B's hair and hand. An assault of this is calculated to outrage
der s. 354 I. P. C. 4 Bur.

—a boy of tender age was charged with the offence of rape on the person of a little girl. The Judge found him guilty but was doubtful as to whether a boy of tender age could be said to be guilty of that offence, held that the presumption of English cases against the possibility of the offence of rape by a boy under 14 did not apply to India and the question was one of fact only. 37 A. 187 : 28 I. C. 659 16 Cr. L. J. 322.

—separate sentences under Ss. 354 and 504 were held to be illegal 10 I. C. 771 : 12 Cr. L. J. 242 : 24 Bur. L. T. 67.

S. 355 (Assault or criminal force with intent to dishonour person otherwise than on grave provocation.)

—in order to prove that the accused made the assault with intent to dishonour a woman, absence of grave and sudden provocation must be proved. 96 I. C. 859 : 27 Cr. L. J. 1003 : 9 N. L. J. 157 : 1927 Nag 47.

—disturbing an orthodox Brahmin while in his prayer is sufficient to cause grave and sudden provocation. *above case*

—when an under-trial accused struck a Sub-Inspector while giving evidence against him, he was guilty under this sec. 27 A. W. N. 186.

—held that no offence was committed by the accused a pleader who ejected a trespasser from the pleader's room after warning since the complainant's intention in remaining in the pleader's room after his presence was objected to, was to annoy the accused and the accused did not exceed his rights in putting the trespasser out of the room. 15 Bom. L. R. 1039 : 2 Bom. Cr. C. 168 : 22 I. C. 158 : 15 Cr. L. J. 414.

—conviction for separate sentences under Ss. 147 and 353 was held to be illegal. 67 I. C. 729 : 23 Cr. L. J. 457 : 1923 Lab. 91, 1918 P. L. R. 135 : P. R. 5 of 1918 : 19 Cr. L. J. 356 : 44 I. C. 352 *fol.*

S. 360. (Kidnapping from British India).

—the conveying must be without the express or implied consent of the person. 8 M. L. T. 91: (1910) M. W. N. 262.

—kidnapping a girl of fifteen years of age out of British India with her consent is not an offence under this sec. 20 B. L. R. 372: 4 Bom. Cr. C. 227: 42 B. 391: 45 I. C. 506: 19 C. L. J. 602.

S. 361. (Kidnapping from lawful guardianship).

Nature of offence.

—the offence is complete when the minor is actually taken from lawful guardianship, it is not an offence continuing so long as the minor is kept out of such guardianship. 5 Pat. 536: 95 I. C. 392: 27 Cr. L. J. 792: 1926 Pnt. 493, 27 C. 1041 F. B., 1 M. 17 Dist. 26 M. 454 F. B., approved, 18 A. 350, 19 A. 109, 25 P. R. 191, 55 P. L. R. 1916, 13 P. R. 1904, 15 O. C. 351: 14 Cr. L. J. 93: 1 Ind. C. 653, 38 A. 664, 14 A. L. J. 765.

—the offence is complete when a person is actually taken out of the custody of the lawful guardian. Under the Indian Law no one is liable for being an accessory after the fact. 2 C. W. N. 81.

—whether the offence of kidnapping is complete when the person has been out of the custody of the lawful guardian is a question of fact to be determined according to the circumstances of each case. 6 Pat. 471: 104 I. C. 436: 28 Cr. L. J. 820: 1926 Pat. 159.

—there cannot be abetment of the offence on the hypothesis that the offence is a continuing one. 38 A. 664, 26 M. 454, 27 C. 1041 F. B., 6 P. R. 1894, 3 P. R. 1894, contra, 1 M. 173, but where there is a conspiracy before the kidnapping takes place there may be conviction for abetment, 26 A. 197; otherwise not. 4 C. W. N. 528.

—taking away in good faith is not kidnapping. 1 Weir 205 (1864) W. R. (gap no) 12.

—enticing need not be by means of forces or fraud, 7 W. R. 62, 2 W. R. 5, 61, 3 W. R. 15, but there must be taking or enticing of a child, so where a girl runs away for ill-treatment and accompanies the accused no offence under this sec. is committed. W. R. 6.

—where the evidence disclosed that but for something which the accused consented to do and ultimately did, a minor girl would not have left her husband's house there was sufficient taking in law. 109 I. C. 907: 54 M. L. J. 456: 29 Cr. L. J. 635: 1922 Mad. 585.

—the offence consists in the taking or enticing a minor out of the keeping of the lawful guardian of such minor without the consent of such guardian. If a minor is taken with the consent of the guardian and subsequently married improperly without the consent of the guardian, to any person, such improper marriage would not be itself amount to kidnapping. A consent given on a misrepresentation of a fact is one given under a misconception of a fact within the meaning of sec. 90 I. P. C. and as such is not useful. 36 M. 453.

S. 361. Lawful guardian—*contd.*

—the mere relationship *per se* of master and servant does constitute the master the lawful guardian of a minor servant with this sec. *above case*

—the explanation of the words 'lawful guardian' has obviated the difficulty of protection to prove strictly that the law guardian was a guardian within the meaning of the legal acceptation of the word. 8 C. 971.

—in order to bring a case within the purview of the expression "lawfully entrusted" in explanation to s. 361 it must be clearly shown that not only the mother of the girl requested the alleged guardian to take the girl under his protection but also that he accepted the trust. 1930 Sind 164; 1930 Cr. C. 649, 8 C. 971 *Ref.*

—if the facts are not incompatible with the continuance of the father's legal possession of the minor he must be held to be in the father's possession or keeping even though the actual possession should be temporarily with a friend or other person. 24 M. 2 P. 291.

—'lawful guardian' includes not only the parents or relatives in whose house the minor lives and is brought up, but any other person with whom the minor resides by the consent, express or implied, of those who have higher legal rights. 7 P. R. 1911, does not include a person gaining possession of the minor by an offence under this sec. 7 P. R. 1911, 2 N. W. P. 286.

—if a minor abandons her guardian with no intention of returning she cannot be held to continue in the guardian's keeping. Whether there was such an intention in a case depends on the facts thereof. 87 I. C. 513; 26 Cr. L. J. 977. 30 C. W. N. 215; 1926 Cal. 467.

—a person cannot be convicted of kidnapping from lawful custody where the evidence shows that the minor had left the guardian to his keeping. 87 I. C. 215; 1926 Cal. 467.

—guardian of his sister and brother in respect of an offence under this sec. O. 831; 23 Cr. L. J. 479; 1911 Cr. C. 563; 1911 M. W. N. 39.

—a girl under 16 years of age who is under 18, may be held to be under the guardian. 1911 Cr. C. 563.

Lawful guardian under Hindu Law.

—under the Hindu Law the father is the guardian of his children and is ordinarily entitled to their custody, so if a mother removes a girl from her father's house for the express purpose of giving her in marriage without his consent, it will be an offence under this sec. 8 C. 969; 8 P. R. 1876.

—a Hindu who becomes a Sanyasi loses his right of guardianship over his children and cannot regain them by reverting back from Sanyasism. 21 M. L. J. 195; 1911 M. W. N. 39.

—the mother is the natural guardian of her children after the father, if he has not appointed any one else as guardian. 7 W. R. 74.

S. 361. Lawful guardian under Hindu Law—contd.

—under the H. L. though paternal uncles are preferential guardians to maternal uncles, where paternal uncles claim an adverse interest they are not entitled to the custody of the minor's person under the provisions of Act VIII of 1890 15 Cr. L. J. 640: 25 Ind. C. 840.

—the father and the mother only have the absolute right to the custody of a Hindu minor and no such right exists in the nearest male relation of the minor so as to be a defence to a charge of kidnapping a minor from a *de facto* guardian. 42 A. 146: 18 A. L. J. 64.

—mother is the proper and natural guardian of an illegitimate child. 1 C. 971.

—after marriage
without his consent
V. R. 14,
27 P. R. 1915.

Lawful Guardian under Muhammadan Law.

—the mother being the lawful guardian, if a father takes away a son under seven, or a daughter under puberty, if *sunni*, or under seven, if *shiah*, or an illegitimate child from the custody of the mother, he commits an offence under this sec. 11 C. 649, 8 A. 322, 2 W. R. (Civil) 76, 2 A. 71.

—the mother is the natural guardian of her illegitimate children, 8 C. 971, and under the *Sunni Law* of the minor daughter till she reaches puberty at the age of fifteen; 6 Bom. L. R. 536, 12 Bom. L. R. 891, even when the daughter is married. 32 C. 444, and attains puberty. 60 P. R. 1905.

—in the absence of any evidence that a lawful guardian entrusted the custody of a Muhammadan minor girl to her husband a person cannot be convicted for kidnapping her from the custody of her husband. Under the Muhammadan Law, in the absence of the mother, mother's mother is the lawful guardian of a girl who has not attained puberty, the husband is not the lawful guardian of her person. 27 C. W. N. 531: 37 C. L. J. 329: 73 I. C. 936: 24 Cr. L. J. 712, 32 C. 444.

—according to Muhammadan Law the occurrence of puberty determines minority and the mother's right to custody, but for the purposes of sec. 363 I. P. C. regard must be had only to the definition of minority in s. 3 Indian Majority Act. 37 M. 567.

Consent of Guardian.

—consent given by the guardian after the commission of the offence is of no avail nor the consent given by a temporary guardian in collusion with the accused. 31 A. 448: 6 A. L. J. 682.

—consent given on a misrepresentation of fact is no consent. 36 M. 453, 17 P. R. 1916.

—where the mother connived at the seduction of her daughter there was reason to believe that the subsequent taking by the accused was with her consent. (1912) U. B. R. 136.

S. 361. Out of the keeping.

—the word keeping implies neither prevention nor detention but rather maintenance, protection or control manifested not by continual action but as available on necessity arising. 6 Bom. L. R. 785, A. L. J. 792.

—where a girl was ordered by her father to take food to the bullocks and as she was coming home she was persuaded by the accused to accompany him, it was taking out of the keeping of the lawful guardian. 40 A. 507.

—where a female minor by preconcerted arrangement with the accused left the house of her parents of her own accord and met the accused at the appointed place, the accused was held guilty as he was an active participator in the girl's leaving her parent's house. 1907 U. B. R. (P. C.) 11, 1 L. B. R. 205.

—but where a low class girl under sixteen left the custody of her husband and parents and voluntarily stayed with the accused for a month after which she changed hands several times the accused was not guilty under this sec. 37 A. 624.

—where a married woman under sixteen quarrelling with her mother-in-law left her husband's house but on her way she was induced by the accused to accompany him, the accused was guilty under this sec. 14 A. L. J. 792, 8 S. L. R. 182; 16 Cr. L. J. 117; 27 Ind. C. 161.

—where before the confirmation decree by the High Court dissolving the marriage and directing the wife to deliver up to the husband the son born of the marriage, the wife removed the boy from the father's custody, and was held that as the order made until confirmed by the H. C. th under this sec. 18 C. W. N. 464; 41 C. 714; 15 Cr. L. J. 72; 23 Ind. C. 434.

—if a minor girl leaves her husband's house without any persuasion, inducement or blandishment held out to her by a man so that she has got fairly away from home, and then goes to the man, he cannot be deemed to have infringed the law even if he does not restore her to lawful guardian. 73 I. C. 260; 24 Cr. L. J. 564; 1923 Lah. 330.

—where the accused was appointed a teacher by the father of a boy below the age of 14 to teach Quran and the father went away on leave for a short time the boy remaining under the temporary guardianship of the accused and the accused, with the object of teaching him how to paint scenes with the idea of inducing him to join a theatrical company, removed the boy to a distant city, he was guilty of kidnapping. 86 I. C. 428; 26 Cr. L. J. 796; 23 A. L. J. 10; 1925 All. 295.

—where a Christian wife being converted to Hinduism takes her husband with her during his absence and is committed. 102 I. C. 209:

S. 362. (Abduction).

—'abduction' itself is not an offence under the Code but with certain intent it is an offence 8 P. L. R. 1824: 75 I. C. 297: 24 Cr. L. J. 921: 15 W. R. 4 6 B. L. R. 129: 12 A. L. J. 91: 15 Cr. L. J. 154: 22 Ind. C. 730.

—the offence of abduction is a continuing offence and a girl is being abducted not only when she is taken from one place to another. 12 A. L. J. 91: 15 Cr. L. J. 154: 22 Ind. C. 730: 7 S. L. R. 128: 15 Cr. L. J. 511: 24 Ind. C. 599, it is triable by the court where the offence is committed. 7 S. L. R. 123: 15 Cr. L. J. 511 24 Ind. C. 399.

—when a man by a promise of marriage induces a woman to leave her house, but does not marry her or get her married, he is said to deceive her within the meaning of this sec. 4 A. L. J. 482: 27 A. W. N. 199: 6 Cr. L. J. 9.

—deceitful marriage of a girl with the intention of prostituting her amounts to abduction 7 P. R. 1831 Cr.

—where no force or deceit is practised no offence is committed. 2 W. R. 7, 11 P. R. 1833.

—compelling a girl to go away with the intent to have sexual intercourse is punishable under s. 366 read with s. 362, and not Ss 396 and 506. 9 M. L. T. 406: 12 C. L. J. 241: 10 Ind. C. 290.

—when the appellant met the girl she had ceased to be a kidnapped woman in the strict sense. She was then a free agent but she would not have gone with the appellant but for his false representation to her as to his being Police constable and the inducement held out by him that he would take her to the police station, his action therefore amounted to abduction under s. 362. 73 I. C. 510. 24 Cr. L. J. 622. 1923 Lah. 158.

S. 363 (Punishment for kidnapping).

—where the mother from whose custody a Mahamedan girl was removed, lost her right of guardianship by marrying in a stranger family the conviction under s. 363 I. P. C. could not be sustained. 1930 Cal. 665: 51 C. L. J. 476 1930 Cr. O. 1057. 123 I. C. 181.

—a person having been charged with an offence of kidnapping in Moyurbhunj which is outside British India, cannot be tried by a court in British India within the local limits of which the person kidnapped may be conveyed or concealed or detained 20 C. W. N. 62.

offence. 24 O. C. 329. 64 I. C. 392: 27 Cr. L. J. 792: 454 F. B., 18 A. 350, 19 A. 109, R. 1904, 14 Cr. L. J. 93: 18

—whether the offence is complete when the person has been out of the custody of the lawful guardian is a question of fact to be determined by the circumstances of the case. When a girl was enticed to get into motor car and the man in the motor car

S. 363. (Punishment for kidnapping)—contd.

drove away with her in order to kidnap her he was guilty under s. 363, I. P. C. 6 Pat. 471 : 104 I. C. 436 : 28 Cr. L. J. 820 : 1928 Pat. 159.

—the maximum punishment prescribed should be inflicted in a case of most aggravated form. 3 W. R. 3.

—after acquittal under s. 498, opposite finding on the same evidence under s. 363 is illegal. 56 P. L. R. 1911 : 12 Cr. L. J. 94 : 9 Ind. C. 511.

—the Magistrates in Upper Burma are bound to follow the rulings of their own High Court. 1 U. B. R. 1902-1903 P. C. 15.

—where the teacher of a boy aged 14 removed him to a distant city during the temporary absence of his father, with the object of teaching him how to paint scenes with the idea of inducing him to join a theatrical company, the teacher was guilty under s. 363 I. P. C. 23 A. L. J. 10 : 86 I. C. 428 : 28 Cr. L. J. 796.

—where the M. finds that there is *prima facie* sufficient evidence that the girl was enticed away, he must examine and decide whether an offence under s. 363 or any other cognate offence against the female of over 16 was committed and cannot remain content with the finding that the girl was not proved to be under 16. 1924 Lah. 718 : 6 L. L. J. 318.

—to constitute the offence of kidnapping the intention to prevent the kidnapped person from returning to his guardian is not necessary. 69 I. C. 444 : 23 Cr. L. J. 716.

—when a person is kidnapped with the object of holding him to ransom, the accused is guilty under s. 363 or s. 365 but not under s. 364. 91 I. C. 240 : 27 Cr. L. J. 64.

—consent of the minor is no defence but where the accused and the girl were neighbours and became attached to each other
 to take place she agreed to go
 though technically it amounted
 not be severely punished. 96 I. C.
 1018.

S. 364. (Kidnapping or abducting in order to murder.)

—where the only incriminating fact was that the accused and the deceased left together and were last seen together and that the accused returned without the deceased, although the circumstances lead to a high degree of suspicion against the accused they cannot be said to be inconsistent with any reasonable theory other than the one that the accused lured him away for the purpose that he might be murdered or so disposed of as to be put in danger of being murdered. 103 I. C. 838. 1927 Lah. 658 : 28 Cr. L. J. 758 : 9 Lah. L. J. 396 : 29 Punj. L. R. 227.

—when a person is kidnapped with the object of holding him to ransom the kidnapper is not guilty of an offence under this sec. though he can be convicted under s. 363 or 365 I. P. C. 91 I. C. 240 : 27 Cr. L. J. 64.

S. 365. (Kidnapping or abducting with intent secretly and wrongfully to confine person.)

—to support a conviction under s. 365 it must be clearly proved that, at the time of the abduction it was the intention of the accused to secretly and wrongfully confine the person 18 C. L. J. 578: 15 Cr. L. J. 43: 22 Ind. C. 187, 109 I. C. 677: 29 Cr. L. J. 597: 10 A. I. Cr. R. 277.

—to constitute the offence intention to secretly confine the abducted person is necessary 92 I. C. 213: 1925 Lah. 614: 27 Cr. L. J. 229.

—s. 365 I. P. C. makes punishable the offence of abduction with intent to cause the person abducted to be secretly and wrongfully confined. So when all that was proved was that a woman was wrongfully confined and not that her whereabouts were concealed from her relatives, the offence could not be considered under s. 365.

Cr. L. J. 812.

—previous conviction under s. 452 was no bar to the accused being tried under this sec. 26 A. W. N. 32.

—persons charged with an offence under sec. 365 cannot properly be convicted of an offence under sec. 498 without a separate charge being framed A. W. N. 1901, 120.

—where the charge is of rape and abduction, the real offence is rape and abduction is an aggravating circumstance; therefore, two separate sentences should not be passed. 89 I. C. 912: 26 Cr. L. J. 1440 1926 Lah. 114.

S. 366. (Kidnapping or abducting woman to compel her marriage.)

—the underlying policy of the sec. is to uphold the lawful authority of parents or guardians over their wards, to throw a ring of protection over the girls themselves and to penalise sexual commerce on the part of persons who attempt to corrupt the morals of minor girls by taking advantage of their youth and inexperience. 1930 All. 19: 120 I. C. 433: 31 Cr. L. J. 85: 1930 Cr. C. 35.

—this sec. is an aggravated form of the offence under s. 365.

—where the accused were tried on charges under secs. 366 and 376 I. P. C. for having kidnapped and raped a married girl, the two offences not forming part of the same transaction, separate sentences could validly be passed and s. 71 I. P. C. was no bar to the same. (75 I. C. 77, 8 Bom. L. R. 120) *Rel. on.* 99 I. C. 344: 1927 Lah. 88: 28 Cr. L. J. 136: 27 Punj. L. R. 802.

S. 366. (Kidnapping or abducting woman to compel her marriage)—*contd.*

—the offence is complete under ss. 366 and 376 I. P. C. . . . two sections are perfectly . . . 10 A. I. Cr. R. 246, 107 A. I. Cr. R. 107.

—but separate sentences cannot be passed for abducting a woman with the intent to rape and for actually committing rape on her. 92 I. C. 850; 1926 Lah. 212; 27 Cr. L. J. 338.

—in a prosecution for offence under ss. 366 and 376 I. P. C. the question of age of the girl is very material. The fact of her being a consenting party to the abduction is entirely immaterial as regards the offence under s. 366 although it has some bearing to the offence under s. 376 I. P. C. 51 C. L. J. 352; 1930 Cal. 437.

—the consent of the girl does not exonerate the seducer. 1930 All. 19; 120 I. C. 433; 31 Cr. L. J. 83; 1930 Cr. C. 35.

—a person kidnapping two girls should be awarded separate sentences. 1 O. C. 4.

—the words "illicit intercourse" in this sec. do not necessarily mean the sexual intercourse of a man with a married woman. These words mean sexual intercourse between a man and a woman who are not husband and wife. 4 A. L. J. 482; 27 A. W. N. 1907, 193; 6 Cr. L. J. 9.

—there are two ingredients of an offence under s. 366. (1).
 . . . 1 or 366
 . . . with the
 . . . a thing
 . . . more or
 . . . 731: 23

Cr. L. J. 459.

—s. 366 requires that abduction must be (a) with the intention that the woman may be compelled to marry a person against her will or (b) in order that she may be forced or seduced to illicit intercourse. 72 I. C. 533; 24 Cr. L. J. 421; 1928 Mad. 585; 109 I. C. 907; 27 L. W. 683; 29 Cr. L. J. 635; 54 M. L. J. 456.

—the word "forced" in this sec. can also be taken to be used in the ordinary dictionary sense as including forced by stress of circumstance 50 C. L. J. 593; 1930 Cr. C. 209; 1930 Cal. 209.

—though the word "seduction" is sometimes used in the sense of inducing a girl to part with virtue for the first time the word as used in this sec. should not be taken to have that narrow meaning and even though a girl may have once surrendered her chastity by the first act of seduction, subsequent seduction for further acts of illicit intercourse can also be taken to be included. 1930 Cal. 209; 1930 Cr. C. 209; 50 C. L. J. 593.

. . . for the reason that
 . . . even before she was
 . . . 366 is abduction
 . . . of loss of chastity

S. 365, (Kidnapping or abducting woman to compel her marriage)—*contd.*

for the first time. 1930 Mad. 980: 1930 M. W. N. 905: 1930 Cr. C. 1196: 129 I. C. 463.

—abduction in itself is not an offence but becomes so when taken in conjunction with other factors forming the subject-matter with other sections of chapter XVI of I. P. O. 29 Punj. L. R. 444: 29 Cr. L. J. 479 109 I. C. 127: 10 Lah. L. J. 325: 10 A. I. Cr. R. 207.

—the offence of kidnapping a minor girl in order that she may be seduced to illicit intercourse is established by the accused taking her from lawful guardianship with such object, although she left home with her intention of having illicit intercourse with him 49 C. 905: 1922 Cal 508. *contra*, *helow*.

—a charge under this sec. can be sustained only by evidence to show the intent or to raise the presumption that illicit intercourse was likely to result from the abduction 23 P. R. 1868 Cr.

—the sec requires a special intent or knowledge, and this cannot be presumed in the case of a young girl of thirteen years. 13 P. R. 1916, but it was presumed in the case of a girl of 14 years 1930 Lah. 52: 31 Punj. L. R. 388. 123 I. C. 528: 31 Cr. L. J. 529.

—the intention is a matter of inference from the circumstance of the case and the conduct of the accused after abduction. 110 I. C. 99: 10 A. I. Cr. R. 429, 3 Lah. L. J. 574. 67 I. C. 731: 23 Cr. L. J. 459, 1930 Lah. 52: 31 Punj. L. R. 388: 123 I. C. 528: 1930 Cr. C. 20 31 Cr. L. J. 529, 1930 Lah. 163: 120 I. C. 606: 31 Cr. L. J. 131: 1930 Cr. C. 171.

—it cannot be said that an intention to seduce to illicit intercourse can be presumed, when the girl has already consented to illicit intercourse. 11 Burma. L. R. 826.

—if the effect of the inducement which is the cause of the abduction, continues till the time of the illicit intercourse the girl is seduced to illicit intercourse. It is not necessary to prove by independent evidence that the girl is seduced to illicit intercourse and that such seduction is separate from and independent of the original seduction which resulted in her abduction. 101 I. C. 189: 1927 Lah. 370: 28 Cr. L. J. 413.

—if the intention of the accused is to kidnap the girl in order to seduce her to illicit intercourse the fact of previous intimacy with her is immaterial. Illegal intercourse does not cease to be one only because it is repeated. 1929 All. 82: 27 A. L. J. 114: 113 I. C. 765 30 Cr. L. J. 218.

—the words "seduced to illicit intercourse" do not refer to first act of seduction or surrender of chastity but they refer to
 n is to
 tion

S. 366. (Kidnapping or abducting woman to compel her marriage)—*contd.*

offence; every fresh removal of the woman was, under the circumstances of the case, held to constitute an offence of abduction. 86 I. C. 71 : 1925 Oudh. 328 : 26 Cr. L. J. 69.

—when it is once complete, abetment cannot be proved against persons who have taken a subsequent part in the proceedings. 75 I. C. 297 : 24 Cr. L. J. 921.

—"marry" implies going through a form of marriage whether the same is in fact valid or not. 45 C. 641 : 22 C. W. N. 695 : 27 C. L. J. 436

—to sustain a conviction under s. 366 I. P. C. there must be finding as to the use of force or deceitful means. 2 O. W. N. 443 : 88 I. C. 463 : 26 Cr. L. J. 1151.

—seduction is a comprehensive term and it does not exclude the possibility of using deceitful means in order that seduction may be practised with effects. 1930 Cal 433 : 1930 Cr C. 741.

—where the accused lifted a woman in order to carry her away and on her return to her home she was found dead, the accused was held guilty of murder.

—if a minor is taken with the consent of the guardian and subsequently married without his consent, such improper marriage does not amount to kidnapping. 36 M 453.

—where a low caste girl left her lawful guardian of her own free will and subsequently met the accused and lived with him for sometimes and the accused gave her in marriage to high caste man, the accused was not guilty under s. 366 I. P. C. as he did not take or entice her away. 37 A. 624 : 13 A. L. J. 848, but see 40 A. 507.

—it is not necessary for a conviction under s. 366 I. P. C. that the accused should know definitely who the guardian of the minor girl is, whom he finds wandering about and whom he makes off with for his own ends. 27 O. O. 32 : 81 I. C. 529 : 25 Cr. L. J. 913.

—If the girl be under 16 years of age an honest belief of the accused that the girl was over 16 will not protect him as he must be deemed to have acted at his peril. 1929 All. 82 : 27 A. L. J. 114 : 113 I. C. 765 : 30 Cr. L. J. 218.

—the mere taking of a girl to an immigration recruiter is not necessarily an offence under s. 366 I. P. C. 12 A. L. J. 91.

—when a girl is kidnapped from the custody of the mother by her paternal relations, not for any criminal or illegal object but to marry her lawfully to a relation of hers, technically the offence

S. 366. (Kidnapping or abducting woman to compel her marriage)—*contd*

of kidnapping is committed, but when the mother herself did not take a serious view of the offence a nominal sentence was enough. 5 Lah. L. J. 377

—where there was a conspiracy to bring the girl to sell her with the allegation that she was a relation of one of the conspirators but it was not proved that she was kidnapped from lawful guardianship the offence committed fell under ss 420 and 511 read with s. 120 B. and not under s. 366 read with s. 120 B. 1930 Sind 164. 1930 Cr. C. 649.

—inordinate delay (here 3 days) in making first information report without satisfactory explanation lends support to the theory that the woman herself eloped with some of the accused and on misapprehension, parents got up the story. 6 L. L. J. 622

—allowing a child to be in the custody of a servant or friend for a limited purpose or time does not determine the guardian's right to legal possession. Hence kidnapping a child which is in the custody of such person and marrying her to another, even if done with the consent of such person, is an offence under s. 365 I. P. C. 1922 Lah. 380. 68 I. C. 620: 23 Cr. L. J. 588

—where probably the girl herself eloped with some of the accused and the parents got up the story and brought under s. 366 was bad. 1925

... .. ntirely distinct offences and
... .. under s. 366 I. P. C. definite
... .. accused is charged of both,
... .. W. N. 910. 45 C. L. J. 561:
... .. 1614.

—without framing a fresh charge a Judge cannot direct the jury to convict an accused for an offence of abduction where the only charge framed against him is for kidnapping. 31 C. W. N. 171: 45 C. L. J. 584. 1927 Cal. 200: 28 Cr. L. J. 201.

S. 366 A (Procurement of minor girl).

... .. the minor girl abducted was
... .. a guest of the offence under
... .. 260. 28 Cr. L. J. 584. 103
... .. dispose of the girl may be
... .. knowledge of the accused
that the girl would be subjected to illicit intercourse. 1930 Lah. 463. 1930 Cr. C. 531.

—merely giving shelter to a girl or taking her from one place to another without knowing that she is married and without any intention to marry her is likely to be forced or seduced person is not an offence under J. 584. 102 I. C. 552: 28 Punj.

... ..
—where the accused took a girl of less than eighteen years of age from place to place with the intention of compelling her to marry against her will or in order that she might be forced or

S. 366 A. (Procuration of minor girl)—contd.

seduced to illicit intercourse and there was no evidence that the girl was compelled to accompany the accused by force or by deceitful means the accused was guilty under this sec. and not under sec. 366, I. P. C. 26 Cr. L. J. 1151.

—though a woman has lost her chastity and become a prostitute she can be seduced again for the purpose of this sec. because on each occasion when a woman is persuaded to indulge in illicit intercourse she is being tempted to sin and so seduced. 1927 Sind 104; 99 I. C. 98; 28 Cr. L. J. 66; 7 A. I. Cr. R. 181; 21 S. L. R. 356

—an offence under this sec. is one of inducement with a fresh
1: 118

1. C. 304; 30 Cr. L. J. 304.

—the fact that the minor was a consenting party does not exonerate the accused. 1929 All. 709; 119 I. C. 14; 30 Cr. L. J. 985; 1929 Cr. C. 293.

—the word "induce" is used in its ordinary meaning of any words of inducement flowing from any person to the girl. 1930 All. 497; 1930 Cr. C. 732.

—the inducement to leave must have for its object seduction by a person other than one who himself induces the woman to leave. 1930 All. 497; 1930 Cr. C. 732

—when the father of a girl takes away his unhappy daughter from her husband's house and gives her as wife to another person he commits an offence under s. 366 A, I. P. C., 1930 All. 497; 1930 Cr. C. 732

—person selling girl with the intention or knowledge that she would be subjected to illicit intercourse are guilty under this sec. It is not necessary that the accused should know that the
1930 L. J. 162; 1930 Cr. C. 531.

continuing offence, consequence is committed at different jointly tried in the place

where the offence was first committed. 1931 All. 55; 131 I. C. 246; 1930 A. L. J. 1485; 1931 Cr. C. 127.

S. 367. (Kidnapping or abduction in order to subject person to grievous hurt, slavery etc.)

—the sec. does not require that the minor should have been actually taken from the actual custody of the guardian. The test of lawful guardianship is that the infant or minor should be in a position to apply to his guardian for protection. 1929 Sind 249; 1929 Cr. C. 543.

S. 368. (Wrongfully concealing or keeping in confinement kidnapped or abducted person).

—intention or knowledge that the abducted minor girl was to be forced to illicit intercourse is the gist of the offence under this sec. 102 I. C. 552; 28 Punjab L. R. 260; 28 Cr. L. J. 534.

S. 368. (Wrongfully concealing or keeping in confinement kidnapped or abducted person)—*contd.*

—to constitute the offence under this section it must be proved that the accused concealed the girl or kept her in wrongful confinement. 93 I. C. 1050; 27 Cr. L. J. 554; 1926 Lah. 384.

—in a charge to the jury for an offence under this section a distinction should be drawn between evidence of knowledge and suspicion. The proper charge would be to place the direct evidence of knowledge first and then place the suspicious circumstances from which an inference of knowledge may be drawn if the jury chooses to do so. 87 I. C. 845; 26 Cr. L. J. 1021; 1926 Cal. 226.

—s. 368 refers to some other party who assists in concealing any person who has been kidnapped, and not to the kidnappers. 6 W. R. Cr. 17, 97 I. C. 960; 27 Cr. L. J. 1200; 1926 Oudh. 560.

—in each case a woman is persuaded to indulge in illicit intercourse although a woman has been seduced again and again. 1927 Sind 104; 28 Cr. L. J. 100.

S. 369. (Kidnapping or abducting child under ten years with intent to steal from its person).

—abduction of a child for the purpose of stealing its ornaments should not be disposed of as a case of theft. 6 W. R. Cr. 2, 7 Mad. H. C. R. 375.

—the offence under s. 363 is included in the offence under s. 369, so separate sentences are illegal. 8 W. R. Cr. 35.

—separate sentences under Ss. 369 and 382 I. P. C. are also illegal as in the latter. 8 W. R. Cr. 84.

S. 370. (Buying or disposing of any person as a slave).

—where the transaction in question was a sale of a man and his offspring as mere chattel the parties to it were convicted under s. 370 I. P. C. 41 M. 334; 33 M. L. J. 430; 1917 M. W. N. 894.

—where D having obtained the possession of a girl about 12 years of age, sold her to A for a value of Rs. 100, A is guilty of buying her as a slave. 1927 Sind 104; 28 Cr. L. J. 100.

—where D having obtained the possession of a girl about 12 years of age, sold her to A for a value of Rs. 100, A is guilty of buying her as a slave. 1927 Sind 104; 28 Cr. L. J. 100.

—where D having obtained the possession of a girl about 12 years of age, sold her to A for a value of Rs. 100, A is guilty of buying her as a slave. 1927 Sind 104; 28 Cr. L. J. 100.

guardians of a minor. 3 N. W. R. 146.

Ss. 372, 373. (Selling or buying minor for purposes of prostitution)

These ss have been amended by the Amending Act XVIII of 1924.

'Ss. 372, 373. Scope of the sections.

—s. 373 must be read in conjunction with s. 372 which is its counterpart and the question whether a woman under the age of eighteen has been bought and sold, hired and let to hire, disposed of and possession obtained are questions of fact for the jury in each case and not of law for the Judges. 52 Bom. 403 : 1928 Bom. 336 : 29 Cr. L. J. 993 ; 112 I. C. 209 : 30 Bom. L. R. 613.

"Sells, lets to hire or otherwise disposes of."

—this sec. contemplates a case of letting or hiring or other similar transactions by which the possession of a girl is obtained with the intention of employing her habitually for the purpose of indiscriminate sexual intercourse. 21 C. 97.

—the words "let to hire" in s. 372 refer to a making over of a minor either in perpetuity or for a term and for the commission of an immoral act of sexual intercourse. These words are the counterpart of the word "hire" in s. 373. Rat. Un. Cr. 962 : Cr. Rul. 16 of 1898, 21 C. 97, *fol.*, 1 M. 164.

—the term "dispose of" has many meanings. It denotes *inter alia* "to bestow for an object or purpose," "to make a change in the circumstances," it does not necessarily imply that there has been a transfer of possession, nor do the terms "sell or hire" necessarily connote a present or immediate transfer of possession. A change in the circumstances of the minor is a "disposal." 1 Weir 359 F. B.

—the word "disposal" connotes some control of the person disposing, over the minor disposed of. 48 M. L. J. 594 : 86 I. C. 804. 21 L. W. 472.

—seeing that the term in s. 372 is used in conjunction with selling and letting to hire, it was contemplated some physical disposal, the exercise of some power of disposal, the exercise of some power of disposal, irrevocable in its moral effects, "sells, lets to hire or otherwise disposes of" acts *ejusdem generis*. 15 M. 328 : 1 Weir 386.

—the performance of the ceremony of tying *talians* to a minor girl, worshipping a basin of water and distributing food does not come within the provisions of s. 372 though the ceremony may be a preliminary step before the selling, letting out or disposing of the girl for the purpose of prostitution. 27 Bom. L. R. 1022 : 87 I. C. 1050 1925 Bom. 478 : 26 Cr. L. J. 1482.

Ss. 372, 373. "Buys, hires or otherwise obtains possession."

—the words "buys" and "hires" convey that meaning according to their ordinary acceptance and giving them due effect, it seems that the associated words "or otherwise obtains possession" were not intended to do more than include other modes of obtaining the same kind of possession as that of buyer or hirer. To bring a case under this sec. it is essential to show that possession of the minor

of the sec. by Act V of 1924 this view does not hold good. See the following cases.

—to constitute an offence under this sec. it is not necessary that the possession of the minor should be obtained from a third person. It is enough if the accused in fact obtained possession of

in the prostitution or other unlawful and immoral use of minors. It is not intended to make punishable the buying, hiring or otherwise obtaining possession for a single act of sexual intercourse with the person so obtaining possession. *above case.*

—buying, hiring, or otherwise obtaining of the possession should not be from a third person, agreement or understanding may be with the minor himself. *above case.*

—to constitute the offence it is necessary that there should be making over of possession of the minor girl either by sale or by a similar arrangement. 35 M. L. J. 157: 1918 M. W. N. 484: 24 M. L. T. 77.

—where a minor girl was brought from Kashmir to Bombay by one accused and put in the brothel there by another accused the offences under ss. 373 and 114 I. P. C. were committed in Bombay and not in Kashmir. 101 I. C. 593: 29 Bom. L. R. 490: 28 Cr. L. J. 455: 1927 Bom. 666.

"With intent that such minor shall be employed.....immoral purpose."

—the onus of proving an offence under s. 373 is on the prosecution but proof of intention (or knowledge such as are mentioned in s. 373 I. P. C. is almost entirely a matter of inference from circumstances. Where all the circumstances want to show that the intention of the accused was to employ the girl as a prostitute as soon as she would be physically ready for the purpose, under s. 106, ill (a) of the Evl. Act the burden lay on the accused proving that she intended to wait until the girl reached the a 16. 35 C. L. J. 451: 1922 Cal. 539, (12 M. 273, 18 A. 24, 22 C. 164

S. 374. (Unlawful compulsory labour)—*contd.*

person to labour against his will within the meaning of this section because it is a thing which such person has agreed to do, although if he assaults such person for not working to his satisfaction he commits an offence under s. 352 I. P. C. 19 C. 572.

—amends cannot be awarded in a case under s. 374 I. P. C. 5 W. R. Cr. 1.

Ss. 375, 376. (Rape, punishment for rape). The sections have been amended.

—in the case of married woman the law of rape does not apply as between husband and wife if the wife has attained the age of ten years. 18 C. 49. (*case under the old law*).

—submission through fear does not take the offence out of the category of rape. 1 W. R. 21.

—vulval penetration is sufficient for conviction under s. 376. 88 I. C. 705; 26 Cr. L. J. 1185; 1923 Lah. 536.

—although rupture of hymen is not necessary to constitute the offence, the courts are reluctant to believe that there could be penetration without the rupture of hymen which is so very near to the entrance. 100 I. C. 116; 1927 Lah. 222; 28 Cr. L. J. 244.

—partial penetration not sufficient to cause any injury to the hymen constitutes rape and not merely an attempt to commit rape. 100 I. C. 113; 28 Cr. L. J. 241; 7 A. I. Cr. R. 416; 1927 Lah. 735.

—where no penetration is attempted or intended no offence under this sec. is committed. 1 Weir 383.

—when the accused stripped a girl nearly naked and was lying upon her he was guilty of attempt to commit rape and not merely of an offence under sec. 354. 45 P. W. R. 1910.

—where the accused caught hold of the girl and undid the string of her *pyjama* and struggled with her and on the arrival of others ran away he was rightly convicted under ss. 376 and 511. 103 I. C. 199; 28 Cr. L. J. 663; 1927 Lah. 580; 28 Cr. L. J. 575, 47 C. 190 *fol.*

—a person physically incapable of committing rape cannot be guilty of an attempt to commit rape. Rat. Un. Cr. 865. (1896).

—a boy of twelve though physically incapable of committing rape can be convicted for an attempt to rape. 11 Bur. L. T. 185; 42 I. C. 175; 18 Cr. L. J. 943, 4 N. W. P. 46 *Ref.*

—the dying declaration is admissible on a charge of rape. 6 W. R. 75.

—the presumption of English law against the possibility of the commission of the offence of rape by a boy under the age of 14 has no application in India. 37 A. 187; 13 A. L. J. 254.

—it is hardly possible that any self-respecting woman would come forward in a court of justice to make a humiliating statement against her honour of having been raped unless it was true. 75 I. C. 77; 24 Cr. L. J. 877; 1923 Lah. 291.

Ss. 375, 376. Trial.

—where the woman made the first information report one day after the occurrence though the Police Station was near at hand a conviction under this sec. was not sustainable. 9 Lab. L. J. 381: 29 Punj. L. R. 240: 1927 Lab. 867.

—in cases of rape, the punishment depends on the atrocity of the crime, the conduct of the criminal and the defenceless state of the female; it has nothing to do with her status or nationality. 82 I. C. 142: 25 Cr. L. J. 1214: 1925 Nag. 74.

—statements made by a girl of 11 years while going from the scene of offence crying, in answer to question why she was crying, is admissible in evidence. *above case*.

—the fact of the girl being *virgo intacta*, affords proof against there being consent to the act. 89 I. C. 1056: 1925 Lab. 613: 26 Cr. L. J. 1488.

—where the evidence shows that the woman consented to the sexual intercourse no conviction under s. 376 I. P. C. was sustainable. 9 Lab. L. J. 337.

—in the case of a girl of 10 years of age no question of consent arises. 29 Cr. L. J. 12: 106 I. C. 348: 9 Pat. L. T. 186.

—under this sec. age of the girl is very material. 51 C. L. J. 352: 1930 Cal. 437.

—in cases of rape, where the prosecution evidence is not sufficiently strong to warrant a conviction, it is unsafe to convict merely on the accusation of the woman who has been raped. The evidence of the prosecution witnesses in favour of the accused cannot be disregarded simply on the supposition that they have been won over. 11 P. W. R. 1922: 67 I. C. 827: 23 Cr. L. J. 475.

—the fact that the injured girl has not been infected with
gc is not conclu-
si 29 Cr. L. J. 12:
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to convict an individual merely on the accusation of the woman who had been raped. 67 I. C. 837: 23 Cr. L. J. 475.

—it is very unsafe to commit an accused under this section on the uncorroborated evidence of the woman raped. 97 I. C. 189: 27 Cr. L. J. 1284: 1927 Rang. 67, 11 Lab. L. J. 391: 30 Punj. L. R. 662.

—conviction on the uncorroborated testimony of the complainant is dangerous. The question being whether there was consent or not, evidence of resistance on the woman's part should be forthcoming in the form of tearing of clothes, infliction of personal injuries or even injuries on her private parts. 75 I. C. 986: 25 Cr. L. J. 74: 1924 Lab. 669, 5 Bom. L. J. 112: 27 Cr. L. J. 1284: 97 I. C. 180, 1927 Rang. 67.

—the mere fact that semen was found upon a piece of cloth belonging to the accused does not raise any presumption that rape was committed on the woman who made the first information report one day after the occurrence even though the police station was near at hand. 9 Lab. L. J. 384.

Ss. 375, 376. Trial—contd

—the fact that the vernacular record showed that the accused put his finger in the private part of the complainant, coupled with

inference from the medical evidence was that at the time of the alleged offence the girl was not a virgin, no trace of semen was found on her clothes and the girl of 17 was said to have been forced through a low arch only 3 feet high, held that the evidence was not sufficient to support the conviction for rape. 1923 Leb. 238; 82 I. C. 64; 25 Cr. L. J. 1200.

—when in a charge of rape it appeared that there was no

—the degree of atrocity, the criminal's conduct and the helpless state of the injured female, should determine the measure of punishment for rape under s. 376, and condonation of the offence on payment of money is immaterial in regard to the heinousness of the crime or the punishment thereof. 52 I. C. 423; 20 Cr. L. J. 547.

—in a case of rape the statement made by the complainant immediately after the occurrence to another woman is admissible not as evidence of truth of the charge alleged but as corroborating the credibility of the complaint and as evidence of the consistency of her conduct. 43 I. C. 443; 19 Cr. L. J. 155, 1925 Nag. 74.

—an inference adverse to the accused cannot be drawn from the fact that the complainant was never married.

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28; 28 Cr. L. J. 256; 1927

—crimes of violence under this sec. must be put down with a strong hand. 30 Punj. L. R. 437; 116 I. C. 883; 1929 Lah. 584; 1929 Cr. C. 150; 30 Cr. L. J. 699.

S. 377. (Unnatural offences.)

—where a person was tried for an unnatural offence and convicted on a charge which did not allege the time, place and

S. 377. (Unnatural offences)—contd.

person relating to the commission of the offence, and without any proof of these particulars, the facts proved against him only being that he habitually wore woman's clothes, and exhibited physical signs of having committed the offence, the conviction was set aside. 6 A. 204

—*coitus per os* is punishable under s. 377 I. P. C. 87 I. C. 97: 1925 Sind 286. 26 Cr. L. J. 945.

—in the case of unnatural offence under s. 377 conviction can safely be based on the uncorroborated testimony of the boy, if it is not otherwise doubtful and the prosecution is not bound to produce witnesses who are not expected to speak the truth. 42 P. W. R. 1914: 28 I. C. 154: 16 Cr. L. J. 266 *contra*. It is unsafe to convict on the uncorroborated testimony of the boy unless for any reasons the testimony is entitled to special weight. Blood stains on the loin cloth of a villager are capable of easy explanation. 73 P. L. R. 1918: 33 P. W. R. 1918: 47 I. C. 670: 19 Cr. L. J. 946.

—it may be regarded as settled law that the dedication of a minor girl to a temple in order that she might serve the temple
 of the minor girl for the
 there is evidence of the
 led. 1911 M. W. N. 479:
 502: 22 M. L. J. 44.

Ss 378, 379. (Theft, punishment for theft).**"Intending to take dishonestly".**

—in order to sustain a conviction under s. 380 I. P. C. it must be found that the accused dishonestly took the property out of the possession of the complainant and "dishonestly" has been defined as meaning with intent to cause wrongful loss to one person and wrongful gain to another. Where the accused took away his kettle after repair from the complainant without paying his dues the removal of kettle was not dishonest and the conviction under s. 380 was illegal. The complainant had no lien over the kettle and sec 120 of the Contract Act did not apply. 29 C. W. N. 1011: 90 I. C. 289: 26 Cr. L. J. 1505.

—the essence of the crime is dishonestly taking of movable property out of possession of some person. So, where the accused removed the goods acting under a mistaken notion of law and believing that the property was his and he had the right to take, he was not guilty under this sec. 52 C. 1015.

—intention is the gist of the offence. 3 W. R. 2, 6 W. R. 79, 8 A. W. N. 97, 25 C. 416. 1 P. L. W. 416.

—when taking is not proved, the offence is not theft: Rat Un. Cr. 143.

—where the owner is kept out of possession only with the object of causing him trouble in the sense of mere mental anxiety and with the ultimate intention of a restoration of the property, it is not theft. 25 C. 416.

Sa. 378, 379. "Intending to take dishonestly"—contd.

—illegal seizure and impounding of cattle, even if maliciously effected with the intention of subjecting the owner to additional expense is not theft. 24 W. R. 7.

—where the servant takes away goods belonging to his master in lieu of wages he does not commit offence under this sec. since there is no dishonest intention. 102 I. C. 339: 1927 All. 470; 28 Cr. L. J. 531.

—the taking should not be permanent or with the intention of appropriating the thing. 22 C. 1017 F. B., 25 C. 410, 34 A. 89, Rat Un Cr 908, 1 Weir 405, 407, 22 C. 139, 15 B. 344.

—taking the property under a mistake of fact and in ignorance of law is not theft. 15 B. 344, 91 I. C. 256: 1926 Cal. 149: 27 Cr. L. J. 80,

—in case of *bona fide* claim of right there is no theft, but the court should see whether the assertion of right is *bona fide* or a mere pretence. 14 C. W. N. 408, 9 C. W. N. 974, 11 C. L. J. 410, 41 C. 433: 18 C. W. N. 397, 44 C. 66: 20 C. W. N. 1270, 10 C. W. N. 222, 15 C. 320, 15 W. R. 17, 16 W. R. 19 68, 27 C. 501, 28 M. 399, 335 P. L. R. 72: 81 I. C. 343, 123: 1926 Lah. 653, I. C. 528.

on of the land in execution of a decree for possession the removal by the J. Dr. of the paddy from the land is not under a *bona fide* claim. 28 C. L. J. 120: 23 C. W. N. 385.

—in cases where the alleged theft consists in the removal of crops grown on land a decision on the question as to which of the parties had grown the crops will in the majority of cases enable the courts to come to a definite conclusion as to whether claim of the accused is *bona fide* or is a mere pretence but it cannot be laid down as a universal rule that where A removes crops grown by B, A necessarily commits theft. But where A is not in actual possession of the land for many years and B, who is in actual possession has grown the standing crops and A removes the crops he cannot contend that he removed them in *bona fide* claim of right. 1929 Pat. 86: 115 I. C. 684: 10 Pat. L. T. 57: 30 Cr. L. J. 511, 9 C. W. N. 974 Expl. 27 C. 501: 4 C. W. N. 190 Rel. on 1921 All 158 Ref.

—in the case of a village tank, leasing out the right of catching fish by the temple-trustees does not establish ownership. Where the accused fishes in the tank asserting a *bona-fide* right thereto, no question of theft arises. 22 L. W. 673: 92 I. C. 855: 27 Cr. L. J. 343: 1926 Mad. 210.

—where there was a dispute between the landlord and the holding and the lord cut cereal as there

Ss. 378, 379. "Intending to take dishonestly"—contd.

—taking of one's own property which is in the possession of another person and for which that person is accountable, amounts to theft. Rat. Un Cr. 343, 1930 M. W. N. 90.

—where an official receiver attached the movable property of a stranger believing it to be of the insolvent and the stranger removes the property, he commits theft. 48 A. 368; 95 I. C. 940; 1927 All. 382. 27 A. L. J. 860.

—when an owner rescued his cattle attached under warrant be committed theft even if there were some irregularities in the warrant, namely, that it did not contain particulars of the date or month or if the cattle were not attachable under the law. 1930 M. W. N. 90, but when the irregularities in the warrant go to the root of the authority of the person executing the warrant it ceases to be legal. 190 M. W. N. 90.

—removal of a calf with the sole motive of preventing its being sacrificed amounts to theft. 1929 Pat. 429; 115 I. C. 895; 10 Pat. L. T. 483. 30 Cr. L. J. 546

—driving another's cattle to the pound with the object of sharing with the pound-keeper the fees to be paid for their release amounts to theft. 22 C. 139.

—taking passenger's umbrella to make him pay fare, without any dishonest intention is not theft. 14 C. W. N. 936.

—where the accused in order to punish a boy tied him to a tree and then took away his cloth in order to put him to shame, it was not a case of theft or robbery. 46 M. L. J. 325; 34 M. L. T. 165; 77 I. C. 290. 25 Cr. L. J. 354.

—the servant doing an act at his master's bidding is not guilty of theft, unless it is shown that he participated in his master's knowledge of the dishonest nature of the act. 9 C. W. N. 974

—but where a servant who knew that his master was removing the goods of another person without any claim of right, assisted him in doing so, he was guilty of theft. 90 I. C. 439; 26 Cr. L. J. 1559.

—where an illiterate cultivator who had applied for Letters of Administration removed a box belonging to the deceased having no suspicion that a caveat was likely to be filed, held there was no *mens rea* and there could be no conviction. 85 I. C. 940; 26 Cr. L. J. 652.

—where a person extracts one of the papers from a file in the possession of another which the accused has been allowed to inspect commits theft. 86 I. C. 671; 26 Cr. L. J. 847; 7 Lah. L. J. 118; 1925 Lah. 327. 26 Panj. L. R. 95.

—temporary removal of correspondence with dishonest intention without the consent of the custodian thereof, constitutes an offence under s. 379. 94 I. C. 881; 1926 Bom. 122; 27 Cr. L. J. 689.

"Any movable property."

—any part of earth when severed from the earth is property and is capable of being the subject of theft. F. B., 10 M. 255 overruled. 15 B. 702 *Fol.*

Sa. 378, 379. "Intending to take dishonestly"--contd.

—a mere colourable pretence to obtain possession of property cannot be put forward as a *bona fide* claim of right. 77 I. C. 237: 25 Cr. L. J. 349: 1924 Nag. 311.

—after actual delivery of possession under a decree of Civil Court the Jt. Dr.'s entrance upon the land is not under *bona fide* claim. 28 C. L. J. 120: 23 C. W. N. 385.

—where the *bona fide* of the claim is doubtful the accused will be given the benefit of doubt. 1922 P. 12.

—*bona fide* claim of right is untenable where the accused has acted dishonestly. 1929 Pat. 502: 30 Cr. L. J. 1100: 119 I. C. 887: 1929 Cr. C. 254.

—where from the nature of the dispute and particularly from the plea taken by the accused it is obvious that the case involves a complicated question of right and title, the court should not try the case summarily. 1922 Pat. 10: 1922 P. 265.

—where the land belonged to one and the crops to another there was *bona-fide* claim. 4 Pat. L. T. 608: 72 I. C. 614: 24 Cr. L. J. 454

—where the question of ownership is in the course of determination in the Civil Court S. 379 is of doubtful application. 99 I. C. 104: 8 Pat. L. T. 79: 1927 Pat. 130: 28 Cr. L. J. 72.

—where the accused who are charged with stealing of
the ques-
prove that
1 Pat. 385:

—taking movable property out of the debtor's possession with the intention of coercing him to pay his debt, or in satisfaction of debt, amounts to theft, 22 C. 1017 F. B., 22 C. 869 overruled. (1883) Weir 246, 81 I. C. 138: 25 Cr. L. J. 650, 18 A. 88, but where

the possession
he could not be
was justified in
ed contracted to

sell a barge to the complainant and on failure of the latter to pay the balance of the purchase money on a fixed date the accused seized possession of the barge believing that there had been no delivery of possession in law to the complainant he cannot be convicted of theft inasmuch as no dishonest intention had been proved. 1930 Bom. 488: 32 Bom. L. R. 1140, and where a creditor appropriated payments towards timebarred debt, when the debtor made the payment under misapprehension, the former was not guilty of theft. 1 A. L. J. 508.

—a creditor by taking any movable property of his debtor from his possession and without his consent with the intention to coerce the payment of debt commits theft. 1930 Bom. 167: 32 Bom. L. R. 351: 1930 Cr. C. 491, 118 A. 88, 22 C. 1017 F. B. 10

Ss. 378, 379. "Intending to take dishonestly"—contd.

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F. B., 10 M. 255 *overruled*. 15 B. 702 *Fol*.

Ss. 378, 379. "Any movable property"—contd.

—house-materials but not the house may be the subject of theft. 1 Burma. L. R. 356.

—a boat. 16 W. R. 53, a bull dedicated to an idol, 11 M. 145, but not a bull set at large in accordance with religious usage. 17 C. 852, 8 A. 51, 9 A. 348, an animal captured but not pursued only, 15 O. C. 183, salt spontaneously formed on the surface of the swamp and appropriated or guarded by the Govt. 4 M. 228, Rat. Un. Cr. 66, 1 Weir 412, 10 B. H. C. 74, any valuable security, Rat. Un. Cr. 43 Cr. Rul. 1870, may be the subject of theft.

—water running freely from a river through a channel made and maintained by a person cannot be the subject of theft, 35 C. 437, running water in irrigation channels is a subject of theft as it is reduced to possession, (1912) M. W. N. 119; 11 M. L. T. 162, so also water in the possession of Cantonment authorities may be the subject of theft. 45 A. 680; 21 A. L. J. 654; 75 I. C. 159

—a human body whether living or dead is not movable property and cannot be the subject of theft 25 A. 129.

—fish in tank not enclosed cannot be the subject of theft. 24 M. 81, 1 Weir 384, 35 C. W. N. 455; 130 I. C. 503; 1931 Cr. C. 383. 1931 Cal. 358, but fish in an enclosed tank or in a dried up irrigation tank is a subject of theft. 10 B. 193, 36 M. 472, 51 M. 333; 105 I. C. 826; 28 Cr. L. J. 1002; 1928 Mad. 20; 39 M. L. T. 588; 53 M. L. J. 759; 1927 M. W. N. 788, the test being whether the fish could escape; if they are unable to escape, they become the subject of theft. (1914) M. W. N. 168, 36 M. 472, 105 I. C. 826; 39 M. L. T. 588; 53 M. L. J. 759. 1927 M. W. N. 788.

—in Behar and Orissa and especially in Champoran District ordinarily a raiyat of an occupancy holding has a right to fish in his land when it is flooded and can not only prevent others from entering on his land for catching fish but can seize the fish from any trespasser 12 Pat. L. T. 286. 127 I. C. 565; 32 Cr. L. J. 41; 1930 Cr. C. 936, 1922 Pat. 9, 1924 Pat. 534 *Rel. on.*

—a currency note was cancelled but before it could be actually cut into piece and burned, it could be the subject of theft. 88 I. C. 893; 26 Cr. L. J. 189; 1925 S. L. R. 197 *Fol.* 29 O. 49 *Dist.*

—films or decoded cablegrams on flimsy paper given to employee for destruction may be subject of theft. 83 I. C. 889.

—dishonest removal of property kept as security amounts to an offence under s. 380 I. P. C. 1923 Cal 594, 72 I. C. 526; 24 Cr. L. J. 414.

"Out of the possession of any person."

—a lost property cannot be the subject of theft. 10 B. L. T. 261, the property must be in the possession of the prosecutor, 20 W. R. 80, or some person on his behalf as trustee or bailee. (1887) 8 J. L. B. 410, 3 P. L. J. 354.

—but where the right to possession is disputed no theft is committed. 9 B. 135 but one should not be allowed to take the law into his own hands. 27 C. 501, 4 C. W. N. 190.

Ss. 378, 379. "Out of the possession of any person"—contd.

—where the crop is attached by distraint made by a Revenue Court the owner is guilty of theft for removing them. 1 Weir 420, 423, 8 A. L. J. 656, but when the attachment is made by a Civil Court the accused is not guilty of theft for harvesting them but is punishable under ss. 424 and 403, 22 M. 151, 16 M. 364, 1 Weir 421, but no offence is committed where there is no dishonest intention. 13 A. L. J. 1058, 1 Weir 423.

—where crops are attached by means of beat of drum only and the procedure prescribed by Or. 21 R. 44 C. P. C. is not followed the produce cannot be deemed to have passed from the possession of the Jt. Dr. into the possession of the court; so its removal does not constitute theft. 1931 All. 142; 32 Cr. L. J. 437; 129 I. C. 715; 1931 Cr. C. 203.

—theft may be committed by joint owner in respect of property in joint possession. 7 M. 557, 1 Weir 408, 3 A. 181, 1 A. W. N. 115, 12 P. R. 1889. *Contra*, 10 A. L. J. 527, but theft is not committed when the tenant takes the whole crop including the share of the landlord. 26 M. 481, 1914 M. W. N. 106, 483.

—where the jointly owned animal which is in possession of one co-owner is taken away by another co-owner but not dishonestly as defined in the Code, the latter is not to be punished under this section. 103 I. C. 847; 1927 Leb. 630; 28 Cr. L. J. 767.

—theft was committed where trees, which are the properties of the zemindar were blown down by a dust-storm and removed and appropriated by the tenant. 42 A. 53, 17 A. L. J. 974; 1 U. P. L. R. 133.

—the possession must be ascertained. 23 A. 306.

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in spite of the order as to possession. 31 C. W. N. 964; 1927 Cal. 701; 104 I. C. 443; 28 Cr. L. J. 827.

—but where the Magistrate attaches the crops in a proceeding under s. 145 Cr. P. C. and one of the parties subse-

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103 I. C.

"Without that person's consent."

—where the consent was given through the servant of the owner to procure the conviction of the accused but without his knowledge, no offence of theft but abetment of theft was committed. C. 366.

Ss 378, 379. Trial—contd.

—separate consecutive sentences under ss. 380 and 457 I. P. C. should not be passed. 1930 Pat. 385 : 31 Cr. L. J. 492 : 1930 Cr. C. 767 : 123 I. C. 393.

S 380. (Theft in dwelling house &c).

—building means a permanent edifice of some kind Rat. Un. Cr. 56 (1871)

—'building' in ss 380 and 454 I. P. C. means some structure intended for affording some sort of protection to the persons dwelling inside it or for the property placed there for custody. A structure which does not afford any such protection by itself but merely serves as a fencing or other means of merely preventing ingress or egress cannot make the place a building or a house within the meaning of those sections. 100 I. C. 120 : 28 Cr. L. J. 248 : 1927 Mad. 313 : 38 M. L. T. 163 : 62 M. L. J. 143.

—a brakevan, 1 Weir 436, 23 A. 306, the roof of the house 1 Weir 435, a verandah, 1 Weir 435 (*contra*, 1 P. R. 1881), a compound, Rat. Un. Cr. 484, is not a building

—a railway carriage in the railway station. Rat. Un. Cr. 293 Cr. Rul. 3 of 1886, a courtyard, 35 P. R. 1879, 2 A. W. N. 224 16 P. R. 1889, is a building within the meaning of the section.

—where the accused who was successful in a claim case in the civil court took forcible possession of the shop which was attached by the complainant in execution of a money decree, the accused could not be convicted of theft 42 M. L. J. 490 : 1922 Mad. 405.

—the property should be under the protection of the building, unlawful entrance is not necessary. 21 W. R. Cr. 49.

—a theft by a constable of property from a house he is employed to guard, is punishable under s. 380 and not under s. 409 I. P. C. 3 W. R. Cr. 29.

—a theft by hired boatman on board a boat comes under this sec. 8 W. R. Cr. 32

—when the property in house belongs to two persons separate sentences cannot be inflicted 11 W. R. Cr. 38.

—where house breaking is immediately followed by theft separate sentences cannot be passed under ss. 380 and 457. 96 I. C. 528 : 5 Pat. 454 : 27 Cr. L. J. 976 : 1926 Pat. 367 : 7 Pat. L. T. 794.

S. 381. (Theft by clerk or servant of property in possession of master).

—the mere fact that certain articles were removed secretly is not sufficient to indicate that the accused had any dishonest intention. 5 Lab. 56 : 81 I. C. 185, 41 C. 433, 44 C. 66 *fol.*

—a hired boatman is not clerk or servant under s. 381 I. P. C. 8 W. R. Cr. 32.

—the accused charged with having stolen from a treasury building over which they as *burkundars* were placed in charge, should be punished under s. 381 and under s. 409 I. P. C. 2 W. R. Cr. 55.

S. 381. (Theft by clerk or servant of property in possession of master)—*contd.*

—mere standing by a thief is not abetment under ss. 109 and 381. 3 Pat. L. T. 127; 64 I. C. 510; 23 Cr. L. J. 30; 1923 P. 121, 54 I. C. 262 *Ref.*

S. 382. (Theft after preparation made for causing death etc., in order to commit theft.)

—unless theft has actually been committed a conviction under s. 382 I. P. C. cannot stand. 77 I. C. 434; 25 Cr. L. J. 386.

—separate sentences under ss. 369 and 382 I. P. C. are illegal. 8 W. R. Cr. 84.

—even though there is every reason to surmise that the accused were in a certain place for the purpose of committing theft, s. 382 I. P. C. requires that actual theft shall be committed. 1923 Lah 512.

—s. 384 does not expressly provide for the punishment of an attempt to commit extortion and s. 511 relates to such offences as an attempt to commit suicide or an attempt to obtain illegal gratification which are expressly punishable by other section of the Code, so there may be a charge under s. 384, read with s. 511. 98 I. C. 60; 1927 Pat. 89; 27 Cr. L. J. 1244.

Ss. 383-384. (Extortion, punishment for extortion).

—the offence of extortion is carried out by overpowering the will of the owner. 4 W. R. 5

—to constitute the offence threat may be used by one and property may be received by another by way of arrangement. 2 B. H. C. 304.

—obtaining money from person against his will under threat in case of refusal, of loss of appointment, is extortion. 18 W. R. Cr. 17. Choukidar exacting money is punishable under this sec. 3 W. R. Cr. 32.

—the terror of a criminal charge is a fear of injury within sec. 389. Extortion may be equally committed whether the charge threatened is true or false. 7 W. R. Cr. 28.

—delivery by the person put in fear is necessary to constitute the offence. 6 W. R. 19.

—when money was extorted under a threat of confinement and it was paid by a third person, a money-lender, the accused was guilty under this sec. but the money-lender could not be regarded as an accomplice. 27 C. 925; 4 C. W. N. 755.

—a conviction under s. 384 I. P. C. cannot be maintained when the accused had no dishonest intention in removing the property. 26 P. L. R. 97; 86 I. C. 426; 7 Lab. L. J. 121.

—If all that the accused did was to promise to do a thing which he was not legally bound to do and said that if money was not paid to him he would not do that thing it does not amount to an offence. 46 A. 81; 81 I. C. 609; 25 Cr. L. J. 961; 21 A. L. J. 850.

—where the accused promised to speak favourably to a person in authority and to do his best to induce him to something and

Ss 383-384. (Extortion, punishment for extortion)—contd

In consideration of this promise he received money, he cannot be said to have committed extortion, *above case*.

—where a person was charged with selling foreign cloth : C. 774: 25 Cr. L. J. 62.

—under s. 384 I. P. C. is committed in the presence of the village choudidar, without eliciting any disapproval on his part, will not render him liable as an abettor of the offence. 8 C. 728: 11 C. L. R. 223.

—a *Nikat Khawan* is not bound to read a *Nikah* for a person unless he chooses to do so and it is certainly no offence for him to demand any fee he likes for doing so. 4 Lab. 179: 75 I. C. 542: 24 Cr. L. J. 958.

—in a case under s. 384 it becomes material for the court to satisfy itself that the person accused put the complainant or complainants in fear of injury, with the object of inducing them to pay him money. 15 A. L. J. 127: 38 I. C. 429: 18 Cr. L. J. 317.

—offences of extortion and cheating compared 30 Bom. L. R. 967: 1928 Bom. 346.

S. 385. (Putting person in fear of injury in order to commit extortion.)

—anything forbidden by law is unlawful and by virtue of the wide language of S. 43 I. P. C. is illegal and the threat of any such act with a view to exact money constitutes extortion. But in order to constitute an offence under s. 385 I. P. C. it is not necessary that the threat should be of some conduct which might either constitute an offence under criminal law or which might be made the basis of a civil action for damages. 1930 Pat. 593: 9 Pat. 725.

—where a pleader appearing for the accused demanded a sum of money from the prosecution witness with a threat to put scandalous and indecent questions to him, questions entirely irrelevant to a case he was guilty of extortion 1930 Pat. 593: 9 Pat. 725

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S. 390. (Robbery).

—in order to convict an accused of the offence of robbery it must be proved that hurt or wrongful restraint has been caused for the purpose of theft. 1930 M. W. N. 1142.

S. 390. (Robbery)—contd.

—the use of violence will not convert the offence of theft into robbery unless it is used for one of the ends specified in the sec. 1 Weir 442, Rat. Un. Cr. 65.

—when a child was stripped of his ornaments and when it threatened to tell its mother it was beaten, offence of theft only was committed and not of robbery. 6 C. P. L. R. 36.

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—recent and unexplained possession of the property would be presumptive evidence against the accused on a charge of robbery. 13 M. 426.

—the essence of the offence of robbery is that the offender for the end of committing theft or of carrying away or attempting to carry away property obtained by theft, commits one or other of the wrongful acts mentioned in sec. 390 19 Cr. L. J. 27: 42 I C. 987.

—“restraint implies abridgement of the liberty of a person against his will. A person deprived of the will power by sleep or otherwise cannot be subjected to any restraint. 1928 Lah. 445: 29 Punj L. R. 90: 109 I C. 692: 29 Cr. L. J. 602.

—to constitute the offence of robbery it is not necessary that extortion should follow immediately upon the restraint. In the last part of illustration (d) of this section it is said that the offence of robbery is constituted if the father is in instant fear of his child's death although the child may have been in the hands of the gang for sometime. Therefore, where the accused seized a person and tied him to a pillar and would not release him unless he paid Rs. 100 and in fact he was released on payment of Rs. 75 it was a clear case of robbery. 99 I C. 396: 28 Cr. L. J. 164: 1927 Mad. 307.

—so also the offence of robbery would be quite complete if the robbers scare away the owner on account of the fear caused in his mind before they are able to make their entrance into the house but where the owner of the house is scared away by one crowd and the house is subsequently robbed by another crowd, acting independently of the first crowd, the offence would not be robbery. 26 Cr. L. J. 145: 83 I. C. 705: 1924 All. 701.

—offence of robbery cannot be converted into dacoity where there is simple allegation but not adequate proof that five or more persons have taken part in committing the crime. 26 P. W. R. 1915: 30 I. C. 458. 16 Cr. L. J. 634.

S. 391. (Dacoity).

—where out of six accused three were acquitted at the trial, a conviction under this sec. was not sustainable as the persons committing robbery must be five or more. 39 A. 848, 7 M. L. T. 340: 1910 M. W. N. 52. 11 Cr. L. J. 219: 5 Ind. C. 797.

S. 391. (Dacoity)—*contd.*

—where only five persons were charged with the offence of dacoity and one of them was acquitted but the court believed that there were other persons concerned in the dacoity, committing robbery with violence, conviction of the 4 persons under this sec. is not improper. 1930 M. W. N. 1138

—where out of three known and named persons who were charged with two other unknown persons, one was acquitted by the jury who convicted the others of the offence of dacoity, held that although it was quite open to the jury, while holding that one of the accused who was supposed to have been known to the witness had not been properly identified, to find that the total number of dacoits was five but the Judge should have asked them definitely whether they had considered the result of the acquittal of one and whether they still found that the number of robbers were would be guilty
2: 1927 M. W.

9 W. R. Cr. 5.

—where certain Hindus acting in concert forcibly removed certain cows from the possession of Muhammedana for the purpose of preventing their slaughter, they could not be convicted of dacoity, 15 A. 29, but where cows were forcibly taken away under different circumstances dacoity was held to have been committed. 15 A. 299, 801.

—the essentials of the offence of dacoity are that the theft should be perpetrated by means either of actual violence or of threatened violence. 10 Bom. L. R. 632.

—the essence of a charge of dacoity or robbery is the *animus furandi*. 1929 M. W. N. 185.

—murder committed by dacoits while carrying away the stolen property is "murder committed in the commission" of dacoity. All the members of the gang are liable for such murder. 63 I. C. 623: 22 Cr. L. J. 887: 2 Lah. 275.

—to constitute the offence of dacoity it is necessary that death or hurt or wrongful restraint or fear of such instant evils should be caused by the offender. 38 I. C. 730: 18 Cr. L. J. 346, 5 C. W. N. 229 & C. W. N. 232

—possession of articles six months after was not sufficient to form the basis of conviction. 29 A. 138

—to sustain a conviction for dacoity by the application of sec. 34 I. P. C. it is necessary to charge and prove that the unlawful assembly as a whole had the common intention of committing dacoity or that each accused knew that dacoity was likely to be committed in prosecution of the common object of the unlawful assembly. 1924 M. W. N. 238: 46 M. L. J. 311.

S. 392. (Punishment for robbery).

—where the inmates obtaining information beforehand fled before the attack there was held to be sufficient proof of the fear of hurt or wrongful restraint and the accused were guilty of robbery. 7 W. R. 35.

—where the robbery was committed outside British India but the stolen property was brought to British territory, it was held that the accused could not be tried in British India for robbery, they could be tried for the offence of retaining stolen property. 28 A. 372 : A. W. N. 1906, 52 : 3 A. L. J. 145 : 3 Cr. L. J. 247.

—where the accused were committed to the Court of Sessions on a charge of dacoity and the S. J. without assigning any reason, at the commencement of the trial, amended the charge to one of robbery it was improper for the S. J. to thus alter the charge before hearing evidence. Under the circumstances of the case the fact that the accused pointed out the places where some of the articles stolen in a robbery were found was not sufficient evidence to convict them under s. 392. 16 C. W. N. 238, 13 Ind. C. 783 : 13 Cr. L. J. 127, 17 A. 576 *Fol.*

—the court should base a conviction under s. 392 on insufficient evidence coupled with the mere fact that the accused in his statement admitted to have taken the property for some other purpose which was not believed by the court. 1929 Sind 255 : 1929 Cr. O 633 : 30 Cr. L. J. 1135.

—when the accused are committed on three separate and distinct charges of three separate and distinct robberies committed on the same night, but in three different houses, they must be tried separately on each charge. 6 W. R. 83.

—in order to give jurisdiction the M. cannot split up a graver offence into its component parts of smaller offences. 5 C. W. N. 372.

—every thing done under a claim of right or in good faith is excusable. 4 W. R. 2.

—in certain cases absolute *bonafide* belief would have the consequence of reducing the apparent offence of dacoity or robbery to some lesser offence. But the person pleading *bonafides* should have no dishonest intention at all and his *bona fides* must be perfectly patent from his behaviour before and after the offence. 83 I. C. 899.

—a person who sets up *bonafide* claim of right in defence to a charge of robbery will have to prove that he had no dishonest intention in acting as he did. 83 I. C. 899 : 26 Cr. L. J. 195.

—when the accused committed house breaking in the house of the complainant and abstracted from it a chembu, and when the complainant attempted to catch him and recover his property, the accused, in order to the carrying away of this property caused him hurt, held that the accused committed offences under ss. 457, 392 and 304. 1925 Mad. 466 : 86 I. C. 715 : 21 L. W. 37.

—tying up a boy to a tree for throwing stones and taking his loin cloth containing money to put him to shame, is not robbery. 1924 M. W. N. 303 : 46 M. L. J. 325 : 77 I. C. 290 : 25 Cr. L. J. 354.

S. 392. (Punishment of robbery)—*contd.*

—a sentence of imprisonment is an essential sentence under s. 392; a sentence of fine only is not legal 44 A. 538 20 A. L. J. 388. 66 I. C. 418. 23 Cr. L. J. 274

S. 394. (Voluntarily causing hurt in committing robbery).

... of voluntarily causing hurt, under s. 394 alone and not under

case of a robber who does not himself cause grievous hurt or use any deadly weapon. 23 M. L. J. 186.

—sentence of 14 years transportation is illegal 7 W. R. Cr. 41.
—where there was no previous design to kill any person and one of the accused fired shots to frighten people and death was caused by one shot, others were rightly convicted under s. 394. 52 I. C. 395; 21 P. R. 1919; 20 Cr. L. J. 635.

S. 395 (Punishable for dacoity).

—an offence of persons concern umber
Lah. 1910
24: 26 P. L. R. 139
M. W. N. 52: 10 Cr. ...

—where out of five accused one turned an approver and two were convicted of dacoity L. J. 547; 102 I. C. 483:

section the number of
he less than five 88
Lah. 337.

is no reliable evidence that more than four persons took part in the alleged dacoity, he has jurisdiction to discharge the accused of the offence of dacoity. 11 O. L. J. 748; 82 I. C. 767; 25 Cr. L. J. 1375.

—but where it was fully established that a dacoity was committed by a party of five persons one of whom committed murder and the identity of four persons were established but the fifth remained unidentified the four persons who were identified are equally guilty under s. 496. 1930 Lah. 263; 120 I. C. 490; 1930 Cr. C. 295; 31 Cr. L. J. 112.

—a conviction on a charge of dacoity merely under s. 397 I. P. C. is meaningless as the sec. does not contain any substantive offence but merely prescribes the minimum punishment which can be passed if robbery or dacoity is attended with certain circumstances. Therefore the conviction in such cases should be under s. 395 read with sec. 397 I. P. C. 47 A. 59; 85 I. C. 714; 26 Cr. L. J. 570; 1925 All. 405.

—a conviction for dacoity, based either on a finding of a common object not charged or on evidence which does not prove the essential ingredients of the offence, cannot be sustained. 1924 M. W. N. 238; 34 M. L. T. 307; 77 I. C. 444; 25 Cr. L. J. 396

S. 392. (Punishment for robbery).

—where the inmates obtaining information beforehand fled before the attack there was held to be sufficient proof of the fear of hurt or wrongful restraint and the accused were guilty of robbery. 7 W. R. 35.

—where the robbery was committed outside British India but the stolen property was brought to British territory, it was held that the accused could not be tried in British India for robbery, they could be tried for the offence of retaining stolen property. 23 A. 372 : A. W. N. 1906, 52 : 3 A. L. J. 145 : 3 Cr. L. J. 247.

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—telling up a boy to a tree for throwing stones and taking his loin cloth containing money to put him to shame, is not robbery. 1924 M. W. N. 303 : 46 M. L. J. 325 : 27 I. C. 290 : 25 Cr. L. J. 354.

S. 395. (Punishment of dacoity)—*contd.*

—to constitute robbery it is not necessary that fear should be caused to the owner of the house after the robbers have entered the house. If the robbers scared away the owner causing fear in his mind before they had been able to make an entry in his house, the offence of robbery would be complete. 83 I. C. 705: 1924 All 701: 26 Cr. L. J. 145.

—if the owner of the house had been scared away by one gang of thieves and another gang looted the house, the act of the second gang would amount to theft in a dwelling house and not robbery. 83 I. C. 705: 1924 All 701.

—an act of aggression on the part of one of two conflicting claimants does not constitute the serious crime of dacoity of robbery. 1922 M. W. N. 326: 15 L. W. 552: 1922 Mad 195.

—where the accused was not identified as being present at the scene of dacoity the offence is not proved. 1924 W. N. 434: 10 I. C. 684.

dacoities. above case

—in case of retrial previous evidence may be considered if the accused so wish. 41 P. L. R. 1914: 22 I. C. 334: 75 Cr. L. J. 62.

—where eight persons were each of them separately charged with dacoity, but the jury acquitted four of them and found the other four guilty the evidence before it being that there were offence even if the four the charge as against accused that they were conviction by the jury were four or more. 1924 W. N. 434: 10 I. C. 684.

—the fact that the accused had been required to give security and had been unable to give security is not admissible in evidence in a prosecution of the accused in a dacoity case. 33 C. L. J. 19: 22 Cr. L. J. 60: 59 I. C. 204.

—where the accused is convicted of the offence of dacoity attended with brutal ill treatment of the inmates of the house which was raided, the sentence should be severe and leniency should be shown. 56 I. C. 771: 21 Cr. L. J. 515.

S. 396. (Dacoity with murder).

—to constitute this offence it must be proved (i) that dacoity is the joint act of the accused (ii) that murder is committed in the course of the commission of that dacoity. 6 C. W. N. 72, 29 C. L. J. 325, the prosecution need not prove that the murder was committed jointly by all the accused. 91 I. C. 233: 27 Cr. L. J. 57: 1926 Oudh 245.

—If a dacoit in pursuance of the commission of the dacoity commits a murder the other members of the dacoity will be liable for that murder although they have no participation in the murder.

S. 396. (Dacoity with murder)—*contd*

or although the murder was not committed in their presence even, 17 A. 86, 6 Bom. L. R. 248 or if it was committed during retreat which was an essential part of the common purpose 2 Bom. L. R. 225.

—murder committed by the dacoits when carrying away the dacoity, 142; 2 Lah. did not get to facilitate not apply.

—murder committed while retreating for facilitating the escape is murder committed in the commission of dacoity, 1925 Lah. 142.

—the fact that the murder was committed in the compound of the house raided, at a time when the dacoits were making good their escape, is not sufficient to take the case out of s. 396, 1923 Lah. 329.

not necessary to go back
A dacoity begins as soon
by five or more persons.

—the burden of proving an offence under s. 396 is on the prosecution. 29 C. L. J. 325; 51 I. C. 683; 20 Cr. L. J. 525.

—a larger discretion is vested in the court under this sec. with regard to the sentence than would be the case if the offence charged were under s. 302. Persons found to have blood-stained stick and *Dhoti* should be sentenced to a heavier sentence than others against whom the offence was not so directly brought home, 1923 Bom. 327; 31 Bom. L. R. 565.

S. 397. (Robbery or dacoity with attempt to cause death or grievous hurt).

—s. 397 applies only to the persons who actually caused

—where several persons commit robbery but one of them carries and uses a revolver he can alone be punished under this section. 97 I. C. 362; 27 Cr. L. J. 1098, 98 I. C. 181; 27 Cr. L. J. 1285; 1926 Rang. 207.

—the words "offender" and "such offender" in ss. 397, 398 I. P. C. refer to those persons only who are proved to have actually used or to have been "armed with" deadly weapons and

S. 397. (Robbery or dacoity with attempt to cause death or grievous hurt)—*contd.*

to all persons who combine to commit the specified offences. No s. 397 nor s. 398 creates an offence: they only limit the minimum punishment which may be awarded if certain facts are proved. sec. 34 I. P. C. has no materiality in construing ss. 51 C. 265: 81 I. C. 800: 25 Cr. L. J. 1021: 1924 Cal. 643, 1925 Nag. 136, *not fol.* 28 A. 404, 22 M. L. J. 186 *fol.* (21 42 P. R. 1901, 39 P. R. 1901) *Dis.*, also 72 I. C. 517, L. J. 405

—all the H. Courts in India have now taken the same view that s. 34 I. P. C. has no application in the constitution of s. 397. 96 I. C. 501: 27 Cr. L. J. 949: 27 Punj. L. R. 627 8 Lab. L. J. 410 108 I. C. 689: 29 Cr. L. J. 449, 9 A. I. Cr. R. 194, 1931 Pat. 49: 1 I. C. 267: A. I. R. 1931 Pat. 171: 32 Cr. L. J. 478, 1931 Cr. C. 145, 1924 Cal. 643, 28 A. 404.

—this sec. does not apply to such persons taking part in a dacoity who may be liable for substantive offences committed by some of the parties only in virtue of s. 34 I. P. C. 47 A. 59: 85 I. C. 714: 1925 All 305.

—the intention of the legislature in framing ss. 397 and 398 was that while all persons who combine to commit robbery or dacoity are liable in respect of the substantive offence, any particular offender who is proved to have used or carried a deadly weapon shall receive a punishment not less than specified in these two sections. 51 C. 265: 81 I. C. 800: 25 Cr. L. J. 1025: 1924 Cal. 643.

—this section does not constitute a separate offence; It only provides for a minimum punishment in cases where any offender, 25 Cr. L. J. 259: 76

not merely attempted dacoity was used, not merely carried, it only being shown or brandished even without verbal threats of using it, s. 397 applies. 136 I. C. 45: 25 Cr. L. J. 1181: 1925 Nag. 136 should be construed in a wide sense. It includes not merely cutting the weapon for the purpose of use of the handle of an axe amounts to the use of it. L. K. 46, 150 I. C. 334: 1926 Sind. 150: 92 I. C. 750: 20 S. 1931 All. 304

—the word "uses" in s. 397 does not constitute a separate offence. 1923 Lab. 389.

S. 398. (Attempt to commit robbery or dacoity with deadly weapon).

—where several persons were found in attempting to escape being arrested, held that they could not properly be convicted under s. 397 read with s. 398 and 399 I. P. C. 23 A. 78.

S. 398. (Attempt to commit robbery or dacoity when armed with deadly weapon)—confd

—sec 394 I P C. does not create any substantive offence. It only regulates the measure of punishment when certain facts are found to exist in the commission of the substantive offence which is robbery 52 B 168: 30 Bom. L. R. 88. 107 I C. 703: 29 Cr. L. J. 383. 1928 Bom. 52 10 A I. Cr. R. 11.

—sec. 34 I. P. C. has no application in the construction of section 398 I P C above case

—s. 498 does not create a substantive offence It merely provides that if any member of a gang of dacoits is armed with deadly weapon during the commission of the offence such member is to suffer a minimum punishment of seven years. 1923 Lah 66.

S. 399. (Making preparation to commit dacoity.)

—where a person is convicted of dacoity and also of assembling along with others for that purpose, separate sentences can be awarded for each of the offences proved. But in practice the sentences should be concurrent. 81 I. C. 168: 25 Cr. L. J. 680: 1923 Lah 119.

—under this sec. having in possession or immediate control any explosive substance is one of several means to the end. 39 C. 119

—a mere assembly without further preparation is not a "preparation" within s 399 I P C. for if it were so s. 402 would be redundant. 41 C. 350: 18 C. W. N. 498, 23 I. C. 235: 15 Cr. L. J. 385, 9 Lah 550 109 I C 593: 29 Cr. L. J 577: 1928 Lah. 193

—in order to commit an offence of preparation it is not necessary that the prisoners should have done an overt act towards the commission of dacoity What the law contemplates is that they should have done some act to get ready for a dacoity, and the collection of men from different villages coupled with the collection of arms sufficiently proves the required preparation, 1916 P. W. R. 37: 34 I. C. 1000: 17 Cr. L. J. 230.

—where a number of persons assembled at a place where dacoity was contemplated and one of them armed himself with a gun with a view to prevent any arrest being made, there was sufficient material to constitute the offence under this sec. 97 I. C. 745: 27 Cr. L. J. 1161: 8 Lah. L. J. 406: 27 Punj. L. R. 752.

—to constitute an offence under this sec. it is not necessary that the persons shown to be making the preparation should be five or more in number. But it is necessary to prove that the raid for which they were making preparation was to be committed by five or more persons 71 I. C. 360: 24 Cr. L. J. 136.

S. 400. (Punishment for belonging to a gang of dacoits.)

—in a trial for an offence under this section evidence of previous conviction for dacoity and of orders binding the accused down under s. 110 Cr. P. C. are admissible for proving habit as association. 52 C. 595: 87 I. C. 925: 26 Cr. L. J. 1037 872: 42 C. L. J. 501.

S. 400. (Punishment for belonging to a gang of dacoits)
—contd.

—the offence contemplated in this sec. is one of a very special character and entirely the creation of statute and should therefore be strictly construed. Association of the habitual pursuit of dacoity is the gist of the offence. It must be established that the accused belong to a gang whose business is the habitual commission of dacoity. The fact that some of the accused had once been sent up on a charge of dacoity of which they were acquitted could not be relied on to prove that they were habitual dacoits. 16 C. W. N. 69 : 13 Cr. L. J. 39 : 13 Ind. C. 279, 15 C. W. N. 593, 23 W. R. 18, 32 M. 179 : 6 A. W. N. 1886, 65, 66, 24 M. 523.

—“habitual” means constant, 19 C. 190 and it must be proved that the gang was associated for the purpose of habitually committing dacoity. 1 C. W. N. 146, 23 W. R. 18, 18 P. L. R. 1910.

—the word “belong” implies something more than casual association. It involves continuity and indicates a more or less intimate connection with a body of persons extending over a period of time sufficiently long to warrant the inference that the person has identified himself with a band the common object of which is the habitual commission of dacoity. The essence of the sec. is the agreement habitually to commit dacoity, not the actual commission of dacoities. 1928 Cal. 309 : 110 I. 471 : 10 A. I. Cr. R. 371, 1930 W. N. 862, 19 A. L. J. 725 : 63

10 It is not necessary that the person convicted must have taken part in any dacoity. Evidence though not believed for a conviction under s. 395 I. P. C. may be relied upon for the purpose of conviction under s. 400 I. P. C. Evidence showing the actual participation by an accused in any dacoity is evidence both of association with the gang and his object of such association. 1930 Oudh. 455 : 1930 Cr. C. 1079.

...ate of acts. 47 C. 154
 ...oups of them have been
 ...a comparatively short
 ...of association. 32 M.
 179, but the special conspiracy must be proved. 24 M. 523, 516.
 1. Bom. L. R. 156.

—evidence of previous convictions of offences against property and of bad livelihood is admissible to prove habit, and for this purpose convictions of bad livelihood are more cogent than those of isolated thefts. 38 C. 408 : 15 C. W. N. 461, *contra*. 25 Bom. L. R. 214 : 75 I. C. 67 : 24 Cr. L. J. 887.

—In awarding sentences the court is to consider whether it was established that the particular offenders did in fact join a recognized gang. 45 P. W. R. 1911 : 68 P. L. R. 1911.

—a receiver of the property stolen or a person harbouring a gang is not necessarily a member of the gang within s. 400. 83 I. C. 493 : 1925 Oudh 144.

S. 400. (Punishment for belonging to a gang of dacoits)
—contd.

—only those persons can be convicted under s. 400 I. P. C. who have either taken an active part in the crime or been employed for the purpose of scouting or in other ways facilitating the commission of the crime. *above case.*

S. 401. (Punishment for belonging to a gang of thieves).

—this sec will not apply unless an association for the habitual commission of theft or robbery is clearly made out. 6 A. W. N. 16, 27 C. 139, 1 C. W. N. 146, 3 C. W. N. 388, 9 A. L. J. 565, and "association" referred to in the sec. must be conscious association. 9 A. L. J. 565.

—the word 'gang' is derived from the Anglo-Saxon word 'gangan,' to go, which means 'a number going in company, hence a company or number of persons associated for a particular purpose'. "Belong to a gang of persons" in the section means 'to be one of a gang of persons.' A person who receives stolen property from a gang cannot be said to belong to it, and a habitual receiver is punishable under s. 413 I. P. C. and not under this sec. 99 I. C. 851: 1927 Lah. 524: 28 Cr. L. J. 179: 28 Pnnj. L. R. 19.

—habitual means constant, 19 C. 190, and habit is to be proved by the aggregate acts, the longer the period the better it is to establish habit. 47 C. 154: 31 C. L. J. 192, Rat. Un. Cr. 418.

—the formation of a gang for the purpose of habitually who thereafter join that gang come within this sec. 13 P. R.

—once it has been proved that a gang was formed for the purpose of committing theft all persons who thereafter commit more theft come within the sec. 25 Cr. L. J. 520.

—to prove habit, evidence of conviction of bad livelihood is admissible 38 C. 408.

—where nine persons out of ten put up for trial under s. 401 and one convicted on the basis of the approver's evidence was worthless as evidence of the fact of the formation of a gang. 87 I. C. 848: 26 Cr. L. J. 10.

—judgment in a prior session in which the accused was convicted of dacoity under s. 302 I. P. C. is admissible in evidence. 26 Bom. L. R. 1123, 14 Bom. L. J. 15 C. W. N. 461: 38 C. 408 *fol.*

—the character of the accused not being a fact in issue, evidence of his being a member of a gang is admissible.

—evidence of previous convictions of offences of the same kind and of bad livelihood is not admissible to prove the fact of the formation of a gang.

S. 402. (Assembling for purpose of committing dacoity)
—*contd.*

on a road, and the District was notorious at that time as the scene of frequent and recent dacoities, held, in the absence of any explanation the existence of an intention to commit dacoity had been proved. 23 A. 124 A. W. N 1901, 16.

—where the accused were residents of different villages and lived at a great distance from the village where they were caught

that armed dacoities had been prevalent in the District, held that taking all the circumstances into account, the only reasonable conclusion was that the accused were members of one party and that they collected for the purpose of committing dacoity. 84 I. C. 860: 26 Cr. L. J. 380: 22 A. L. J. 1028: 1925 All. 62, 23 A. 124 *Ref.*

—where a number of persons belonging to different villages were arrested together at a place far away from their respective houses and were found fully armed and equipped for committing dacoity, they were guilty under this sec. 94 I. C. 269: 27 Cr. L. J. 605.

—they, armed, were found assembled under a tree on armed
402 was
9 A. I.

Cr. R. 346

S. 403. (Dishonest misappropriation of property).

—when possession of property is innocently taken but dishonestly retained whether permanently or for the time being, it is criminal misappropriation. 15 C. 388, 400, 12 M. 49, but when there is no intention to cause wrongful gain or wrongful loss of property dishonesty is not made out merely from an intention to deprive the owner temporarily of the use of property. 27 P. R. 1886.

—the offence does not depend on the consequence which has ensued, but only on the act which has been done. 21 C. W. N. 573.

—to misappropriate means to set apart for or assign the wrong person on a wrong use, and this must be done dishonestly. 18 A. L. J. 1131.

—setting apart by one person for the use of some person other than himself and the true owner, may be misappropriation. 27 P. R. 1886.

—prosecution need not establish that definite sum was misappropriated 52 B. 280: 1928 Bom. 148: 30 Bom. L. R. 325: 108 I. C. 505: 29 Cr. L. J. 407.

—the section is in no way restricted to appropriating property to one's own use. 92 I. C. 585: 48 A. 288: 1926 All. 302: 27 Cr. L. J. 297.

S. 403. (Dishonest misappropriation of property)—*contd.*

—mere retention in possession is not conversion to use, there must be actual conversion. 11 P. R. 1908, 17 A. L. J. 145.

—retention of money *per se* is not ordinarily an offence under this sec. 1928 Bom. 205: 30 Bom. L. R. 624: 111 I. C. 730: 29 Cr. L. J. 922.

—where the reversioner of a mortgagor sold some of the bricks of the mortgaged property that had tumbled down and appropriated the price, he could not be convicted either under this sec. or s. 426. 6 C. W. N. 34.

—it cannot be laid down as an absolute rule that if a man cannot move a thing away he cannot dishonestly convert it to his own use. 92 I. C. 747: 27 Cr. L. J. 331: 50 M. L. J. 94: 24 L. W. 603.

—where the accused on the pretext of inspection took away the railway ticket of the complainant substituting his own ticket he committed criminal misappropriation. 25 A. W. N. 9.

—where one of three partners removed from the shop some of the properties belonging to all three partners that alone would

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R. 256.

—criminal breach of trust is a series of criminal misappropriation by a person entrusted with the property misappropriated and a dishonest appropriation even for a short time is none the less an offence. Consequently the offence of criminal breach of trust is committed even where the act of the accused caused wrongful loss for a time only. 68 I. C. 157: 23 Cr. L. J. 557, 8 Bom. L. R. 951 *Ref*

—a general proposition that whenever marriage negotiations break down, the relatives of the lady have a right to retain the presents made with a view to the marriage, cannot be laid down. The element of dishonesty on the part of the accused has to be proved beyond doubt. 1923 Cal. 57: 73 I. C. 348: 24 Cr. L. J. 348.

—a bull set at large in accordance with the Hindu religious usage cannot be the subject of misappropriation as it is not the property of any person. 8 A. 51: A. W. N. 1885, 826.

—where the accused person took possession of a wandering cow of which no owner could be discovered he is not guilty of an offence under s. 403 I. P. C. 67 I. C. 497: 23 Cr. L. J. 401: 91 I. C. 37: 27 Cr. L. J. 5 1926 All. 251.

—a person finding a property of which, from the nature of it, there must be an owner, must take reasonable care of it and endeavour to find out the owner, but he is not bound to adopt

S. 403. (Dishonest misappropriation of property)—*contd.*
 extraordinary means for the discovery nor is he bound to be out of pocket in discovering the owner by means of advertisement.
above case.

—when an article of no appreciable value is found in a public road the owner of which the finder has no reasonable means of discovering, the appropriation of the article by the finder falls under illustration (a) of s. 403 I. P. C. and not under illustration (f) of that sec. and therefore it is no offence 1930 Bom 176 : 32 Bom. L. R. 356 : 1930 Cr. C. 552.

—where in a scheme suit a Hindu father who was accountable for a certain sum of money, was ordered to pay the amount, he is not guilty of misappropriation. 94 I. C. 634 : 1926 Mad. 535 : 1926 M. W. N. 164 : 50 M. L. J. 553.

—a receiver who attaches property but does not produce it is guilty under this sec. although he is also civilly liable. 92 I. C. 585 : 48 A. 288 : 1926 All. 302 : 27 Cr. L. J. 297.

—where a Railway Claims Inspector whose duty was to investigate and make arrangements with the claimants and to pay the amounts but did not credit the sale of criminal misappropriation s. 403 I. P. C. 99 I. C. 593 :

S. 404 (Dishonest misappropriation of property possessed by deceased person at the time of his death).

—s. 404 does not apply to immovable property. 6 Bom. H. C. R. 33

—s. 404 is not expressly limited to moveable property alone conversion is easily possible of immovables have been severed from C. R. Cr. 33 Diss. Where the rafters used in the house were immovable property so long as they were attached to the house but became movable property s. 404 I. P. C. 49 :

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who could possibly have no right to or interest in the effects of a dead man and who misappropriated such effects but not to punish near relation who takes possession of and deals with the effects under a claim of ownership or as heir to the deceased. 1914 M. W. N. 791.

S. 405. } (Criminal breach of trust)

S. 406. } (Punishment for criminal breach of trust)

"Being in any manner entrusted with propertyover property.

—in a prosecution for criminal breach of trust the prosecution must prove that a trust had been created in respect of certain property and the accused violated that trust. 85 I. C. 839: 1923 Lah. 321.

—the word "entrusted" in s. 405 is used in its legal sense and not in its figurative or popular use. The sec. makes no distinction between different kinds of movable property. 1928 Sind. 106: 29 Cr. L. J. 431: 108 I. C. 663: 23 S. L. R. 13.

—where the accused is to sell goods and return money on behalf of owner he is entrusted with the money he receives and commits an offence under this sec. when he fails to account for them. 30 Bom. L. R. 1273: 1928 Bom. 521: 114 I. C. 349: 30 Cr. L. J. 329.

—in a case of theft the original taking is without honesty and criminal breach of trust with the consent of the but with the consent of
 the taking is honest
 Cr. L. J. 86.
 tion could
 to estab-
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 24: 23 Cr.

L. J. 220.

—if the case for the prosecution is false on the whole, the accused is entitled to an acquittal whether his defence is true or false. *above case*.

—the property in respect of which criminal breach of trust can be committed must be the property of some person other than the accused and the accused must hold such property in trust for such other person. 1931 Mad. 235: 1930 M. W. N. 790: 1931 Cr. C. 331.

—where there is no trust this sec. does not apply, a person taking loan is not entrusted with any property, 6 L. B. R. 46, 32 P. R. 1901, money advanced to a broker for the supply of articles is entrusted to him. 7 L. B. R. 278.

—criminal intent at the time of receipt of money is not necessary. 22 M. L. J. 112, 10 M. L. T. 17.

—mere breach of contract is not criminal breach of trust. 6 L. B. R. 62 F. B., 7 L. B. R. 16 F. B.

—this offence may be committed by misappropriation of property to the advantage of third person, 12 W. R. 39.

—property entrusted to avoid it being taken in execution of a decree may be the subject of this offence to the hands of the trustee. 1 Weir 463.

—the accused cannot be said to be guilty of criminal breach of trust simply because he became an executor *de son tort*. 34 C. W. N. 423 1931 Cal. 184. 1931 Cr. C. 248 F. B.

S. 406. "Being in any mannar entrusted with property
over property"—*contd.*

—where mortgage debt was fully paid up and endorsement made on the back of the document after which the mortgagee went inside his house saying that he would return the bond but he did not.

impose to a person

• 1 towards a debt
of trust. 92 L. C.

ст. 23 С. 372.

—this sec does not apply to the misappropriation of the sale proceeds of a property entrusted to auctioneer. 41 C. 844.

—a Municipal Water Works Inspector has dominion over the water belonging to the Municipality and as such if he misappropriates such water for his own use he commits criminal breach of trust 35 A. 361 20 I. C. 239 14 Cr. L. J. 415

—this sec. applies to a partner also, 13 B. L. R. 307 F. B. 21 W. R. 59, but there must be proper demand for account, 35 C. 1108 and it must be satisfactorily proved that the accused has acted dishonestly and with a view to enrich himself clandestinely. 1920 M. W. N. 346

—violation of article purchased on hire-purchase system in violation of the contract, that is without payment of the last instalment, amounts to criminal breach of trust. 17 Bom. L. R. 670, 7 B. L. T. 222, 21 A. L. J. 510 : 45 A. 288 : 73 I. C 508 : 24 Cr. L. J. 620.

—where the agreement in question was by way of wager and consequently void under s. 30 of the Contract Act, a conviction

—but it has been held that the trust contemplated by the sec. need not be in furtherance of a lawful object. In a criminal prosecution under s. 406 I. P. C. a stake-holder cannot say that there was no legal contract to pay the stakes over to the winner. 101 I. C. 890: 1927 Nag. 225: 28 Cr. L. J. 506: 23 N. L. R. 106.

—where a public servant being entrusted with Govt. funds for constructing building obtains the materials gratis from some body and appropriates certain sum as the price of those materials he commits criminal breach of trust, 86 I. C. 459, 4 Pet. 488: 1925 Pat. 414: 26 Cr. L. J. 811: 3 Pet. L. R. 110.

—where money was advanced in pursuance of a contract and there is no entrustment in a fiduciary form any dispute arising out of the breach of the contract is of civil nature and not criminal, 96 I. C. 501 : 27 Cr. L. J. 949.

—If a person pledges the property pledged to him he is g
under this sec. 6 M. H. C. Ap. 28, 13 Burma. L. R. 286. but

S. 406. "Being in any manner entrusted with property
... ..over property"—*contd.*

the absence of contract. 71 I. C. 53: 24 Cr. L. J. 10: 1922 Oudh. 280.

—return of deposit to the brother of a depositor with the best intention and without moral turpitude does not amount to criminal breach of trust. 1929 Sind 119: 30 Cr. L. J. 735: 1929 Cr 104: 117 I. C. 157.

—when the right to the property is disputed and claimed by third person this sec. does not apply. 28 C. 362.

—where an Assistant Station Master whose duty it was to issue tickets to the passengers and to keep them fixed by the
and did not
he was not
was not a

trustee in respect of the excess amount collected, being himself entitled to the beneficial interest therein. 6 L. L. J. 125: 75 I. C. 79.

—retention of money by pleader is not in every case a criminal breach of trust, and a pleader retaining money for legal fees the recovery of which is time-barred is not guilty of offence under this sec. 1924 Nag. 47: 6 N. L. J. 119: 24 Cr. L. J. 591: 73 I. C. 335.

—where the accused takes from a jeweller certain articles of jewellery on approval, under an understanding that he can retain them as sold to him only if he pays the full value in cash and the accused without payment in full disposes of those articles, he will be guilty of criminal breach of trust. The property in the goods will not pass to the accused till he has paid the value in full and it is not open to him to contend that if he chose to appropriate them he could do so leaving the seller merely to a suit for their value. 51 C. 796: 82 I. C. 163: 25 Cr. L. J. 1235: 1924 Cal. 816.

"Dishonestly misappropriates or converts to his own use."

—actual wrongful gain or loss is immaterial, only dishonest intention is essential. 38 M. 639, 30 P. R. 1879, 9 A. 666.

—actual loss to the principal or anybody else is by no means a necessary ingredient of the offence. 1930 Bom. 490: 32 Bom. L. R. 1195 F. B.

—misappropriation may be effected by mere mental act without actual expenditure, but such mental appropriation must be proved by some overt and visible act. 36 P. R. 1889.

—although mere retention of money does not necessarily raise a presumption of dishonest misappropriation, it may sometimes be inferred from the circumstances without direct evidence. (1905) U. B. R. P. C. 19.

—failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused, but is a mere piece of evidence and not conclusive. 1930 Pat 209 11 Pat. L. J. 319: 121 I. C. 321: 31 Cr. L. J. 249: 1930 Cr. C. 417.

S. 406. "Dishonestly misappropriates or converts to his own use"—*contd.*

—delay in making remittance to the Head Office according to departmental rules may be *prima facie* evidence of dishonesty if there is no explanation. But if there is possible explanation for the delay, in the absence of proof of conversion or falsification of accounts no offence is made out by the delay. 106 I. C. 682; 29 Cr. L. J. 90; 9 A. I. Cr. R. 350

—mere delay in payment of money entrusted to a person does not constitute an offence when there is no particular obligation to pay it at a certain date 58 M. L. J. 649; 1930 Mad. 507; 1930 Cr. C. 579; 1935 Cal. 613.

—refusal to allow the removal of a box by the complainant left with the accused unless a debt due to the latter was cleared up, did not constitute an offence under this sec. 17 M. L. J. 413.

—taking charge of pony condemned by the Municipality

L. R. 440 I. L.

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1925 Cal.

615: 26 Cr. L. J. 125; 1900 I. C. 407; 11 I. L. L. 1, 519; 12 I. C. 321 31 Cr. L. J. 249.

—even a temporary retention is an offence provided it is dishonest. It is not necessary or possible in every case of criminal breach of trust to prove in what precise manner the money was appropriated. But where there is no direct evidence of misappropriation and one is left with clearer evidence of dishonest appropriation is proved 1 Cr. C. 417; 11 Pat. L. T. 31

—it is not a criminal offence in every case for a pleader to

—the mere fact that the purchaser of goods subsequently denies the receipt of the goods does not make him guilty of the offence of criminal breach of trust or misappropriation. 72 I. C. 172; 24 Cr. L. J. 332.

—to constitute an offence of criminal breach of trust it is not necessary that the accused should have actually taken to property such as cash from the possession of another and it to his own possession. It is sufficient if certain a

S. 406. "Being in any manner entrusted with property
over property"—*contd.*

the absence of contract. 71 I. C. 58; 24 Cr. L. J. 10; 1922 Oudh. 280.

—return of deposit in the brother of a depositor with the best intention and without moral turpitude does not amount to criminal breach of trust. 1929 Sind 119; 30 Cr. L. J. 735; 1929 Cr. 104; 117 I. C. 157.

—when the right in the property is disputed and claimed by third person this sec. does not apply. 28 C. 362.

—where an Assistant Station Master whose duty it was to issue tickets in the passengers and in charge fares as fixed by the Railway made an overcharge over some of the tickets and did not
 held that he was not
 of trust, as he was not a
 collected, being himself
 1. 6 L. L. J. 125; 75

A. C. 70.

—retention of money by pleader is not in every case a criminal breach of trust, and a pleader retaining money for legal fees the recovery of which is time-barred is not guilty of offence under this sec. 1924 Nag. 47; 6 N. L. J. 119; 24 Cr. L. J. 591; 73 I. C. 335.

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"Dishonestly misappropriates or converts to his own use."

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R. 1195 F. B.

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—although mere retention of money does not necessarily raise a presumption of dishonest misappropriation, it may sometimes be inferred from the circumstances without direct evidence. (1903) U B. R. P. C. 19.

—failure to account for the money proved to have been received by the accused or giving a false account as to its use is generally considered to be a strong circumstance against the accused, but is a mere piece of evidence and not conclusive. 1930 Pat 209; 11 Pat. L. f. 319; 121 I. C. 321; 31 Cr. L. J. 219; 1930 Cr. C. 417

S. 406. "Dishonestly misappropriates or converts to his own use"—*contd.*

transferred from the account of another to one's own account. 1926 Lah 385: 6 Cr. R. 417.

—where in a scheme suit a Hindu father who was accountable for a certain sum of money, was ordered to pay the amount he is not guilty of breach of trust. 94 I. C. 634: 1926 Mad. 535: 1926 M. W. N. 194: 50 M. L. J. 553.

"Dishonestly uses discharge of such trust."

—if there is a contract that the accused is to render accounts at a particular place and fails to do so as a result of his criminal act in respect of his money, he can without unduly straining the language of sec. 405 be said to dishonestly use the money at that place as well, in violation of an express contract and so commits the offence of criminal breach of trust at that place also. 29 C. W. N. 432: 41 C. L. J. 80: 86 I. C. 213: 1925 Cal. 613.

—when a person received money which he is bound to account for but does not render any account he is guilty under this sec. (1909) U. B. R. P. C. 21.

—where the accused, entrusted to make silver ornaments introduced copper into the ornaments he was guilty under this sec. 4 B. H. C. 16.

—where a printer entrusted with a book to print catalogues used it for the purpose of printing a rival firm's catalogue, he was guilty under this sec. 1 U. P. L. 69, but it has been held that deterioration of an article such as turban, by use, being not a loss of property to the owner, constitutes no offence. 2 L. B. R. 216: 10 Burma L. R. 249 F. B.

—where the accused being entrusted by a court officer with certain movable property attached in execution of a decree did not produce it at the time of sale and evaded service of notice, he was not guilty under this sec. 16 A. L. J. 600: 19 Cr. L. J. 975: 47 I. C. 875

—non-user of money for the purpose intended does not necessarily amount to criminal breach of trust, there must be some dishonest user. 1 U. B. R. (1897-1901) 845.

—an agreement between the complainant and the accused that the money embezzled shall be refunded cannot be pleaded by way of defence. 1 Weir 62 (1886), 1 Weir 465 (1883).

—where the charge was criminal breach of trust with respect to some deeds, the accused could not be convicted for embezzling the amounts mentioned therein. 12 O. W. N. 577, 41 C. 844.

—the prosecution must prove that a trust had been created in respect of the property and that the accused had violated that trust. 15 I. C. 839: 1925 Lah. 311.

—the accused as booking clerk recovered in excess of the legal charge but did not credit it to the Railway, held that he could not be convicted of the offence under s. 403 as he was in no sense a trustee. 75 I. C. 79: 24 Cr. L. J. 879: 1925 Lah. 295.

S. 406. "Dishonestly uses . . . discharge of such trust"
—*contd*

—in the absence of contract to the contrary sub-pledge by pledgee is not an offence 71 I. C. 58 24 Cr. L. J. 10 : 26 O. C. 4 : 1922 Oudh 280.

—it cannot be said that it would be impossible under any circumstances for a person to commit criminal breach of trust in respect of his own property. 45 M. L. J. 133. 32 M. L. T. 234 : 72 I. C. 612 : 24 Cr. L. J. 452

Trial.

—place of trial for criminal misappropriation is the place where the money misappropriated was received by the accused. 77 I. C. 425

—where the accused is convicted under s. 406 a direction that the accused should pay the complainant the amount spent for court-fee is illegal. 25 Cr. L. J. 568.

S. 407. (Criminal breach of trust by carrier &c.)

—to constitute an offence under this sec. it must be shown that at least some of the property entrusted cannot be accounted for by the accused. 9 Bom. L. R. 229.

—where the accused was entrusted with certain quantity of

323, *not fol.*

S. 408 (Criminal breach of trust by clerk or servant).

—a person engaged by a trading firm as commission agent of the firm

do so, continues to

—the accused must be entrusted with the property in the capacity of clerk or servant. 8 W. R. 12.

—a Municipal Water Works Inspector has dominion over the water belonging to the Municipality and as such if he misappropriates such water for his own use he commits an offence under this sec. 35 A. 361.

S. 408. (Criminal breach of trust by clerk or servant)—contd.

—if a servant receiving money for specific purpose did not use it for that purpose and when asked falsely said that he used it for that purpose he is guilty under this sec. 22 C. 313. 22 M. L. J. 112. 10 M. L. T. 517 : 13 I. C. 108 : 13 Cr. L. J. 15, 10 W. R. 28, but the property must have been entrusted as clerk or servant. 40 A. 665 : 47 I. C. 867.

—it is not for the criminal court to usurp the functions of a civil court and assist a complainant in recovering from the person to whom they were made over for disposal. 65 I. C. 1000 : 23 Cr. L. J. 216.

—where the relationship between the complainant and the accused was one of partnership and the case was the outcome of a dispute as regards their respective liabilities and there was a receipt executed by the complainant in favour of the accused determining the liabilities the conviction of the accused under s. 408 is not sustainable. 1931 Pat. 159 : 130 I. C. 833 : 1931 Cr. C. 399 : 12 Pat. L. T. 355.

—where the accused having ordered to take certain bags of papers and forms to a certain place and there to burn and destroy them, did not do this but took away the papers, he did not commit any offence under this sec. 29 C. 489, 2 C. W. N. 216.

—excessive delay in remitting revenue collections to the Treasury is an offence under this sec. committed by a village officer. 1 Weir 464.

—the bare retention of moneys entrusted to the servant of a private firm for fifteen months, though may raise serious doubts against the *bona fides* of the servant, cannot, by itself, substantiate a charge of criminal misappropriation. 40 I. C. 303 : 18 Cr. L. J. 655, 33 A. 249 *Dist.*

—where the clerk of a co-operative Bank received moneys from some of the members with instructions to pay the amount to another affiliated Bank but the clerk instead of so paying became a member of the society and took a loan from the society he could not be convicted under s. 408 as there was no evidence of an intention to misappropriate the sum. 1929 Pat. 506 : 117 I. C. 632 : 1929 Cr. C. 266 : 30 Cr. L. J. 812.

—when the act of the accused causes wrongful loss to his master even for a time only he is guilty of the offence. 8 Bom. L. R. 951.

—to convict a person of abetment of this offence it must be proved that the transaction was a dishonest one and the accused, with the knowledge of the dishonesty and breach of trust of the servant, abetted him. 4 C. W. N. 309.

—*not necessary*
R. 401 : 1

—finding of a certain definite sum traced to the accused. Where jury gave a qualified verdict that the amount misappropriated was much

S. 408. (Criminal breach of trust by clerk or servant)—*contd.*

less than that mentioned in the charge, but was not able to say definitely what it was, a conviction could not be based on such verdict. 29 C. W. N. 54 : 40 C. L. J. 555 : 1925 Cal. 260 : 85 I. C. 372 : 1925 Cal. 260 26 Cr. L. J. 532.

—when a clerk is entrusted with certain sum of money and he misappropriates them and is charged in respect of specific sum he is rightly convicted under this sec. 53 B. 119 : 30 Bom. L. R. 1530 : 1928 Bom. 557 : 113 I. C. 612 : 30 Cr. L. J. 185.

—a trial in respect of a gross sum embezzled between two specified dates does not bar a second trial in respect of different sum embezzled during the intermediate period. 1931 All. 209 : 1931 All. 190 : 32 Cr. L. J. 376 : 1931 A. L. J. 98 : 129 I. C. 558, 1923 Cal. 654 Ref 32 I. C. 153 *not fol*

—it is settled law that a servant entrusted with a property must give true account of it. 2 Rang. 476 : 1925 Rang. 47.

—sale of article purchased on hire-system without payment in full, in violation of agreement, is criminal breach of trust. 7 Bur. L. T. 222 : 24 I. C. 161 : 16 Cr. L. J. 425, 45 A. 288, 73 I. C. 508.

—where a charge of criminal breach of trust is made against a general agent of a trader with general authority to expend money, the case must be sure in which it is sufficient to charge a net balance as having been misappropriated.

—conviction by a M. of

by a Court of Sessions

—if the verdict of the jury in respect of charge under s. 408 asked the jury to give their verdict in respect of several items of the charge, and the jury returned a verdict of guilty as regards some of the items and not guilty as regards others and the Judge convicted the accused, held that though the form in which verdict was asked for and expressed was wrong, proper form being simply to ask the jury their verdict in respect of an offence under s. 408 it did not prejudicially affect the accused. 34 C. W. N. 901 : 1930 Cr. C. 1117 : 1930 Cal. 717.

S. 409. (Criminal breach of trust by public servant or by banker, merchant or agent).

—to apply this sec. the breach of trust must be committed in the capacity of a public servant as such. 8 W. R. 1, 24 P. R. 1876, 2 C. L. R. 515.

—when a Post Master receives money for money-order and misappropriates it, he is guilty under this sec. 7 A. 174 F. B.

—where a Post Master handed over a V. P. to the addressee

22

—where a parcel clerk denied V. P. article for more than ten days

of false

for

S. 409. (Criminal breach of trust by public servant or by banker, merchant or agent—*contd.*)

register he was guilty of criminal breach of trust. 94 I. C. 355; 5 Pat. 573; 7 Pat. L. T. 807; 27 Cr. L. J. 611; 1926 Pat. 299.

—banker includes a cashier or shroff. 19 P. R. 1908.

—for a conviction under this sec. all the elements constituting the offence must be strictly proved and if the charge is that a worthless property has been substituted for a valuable one it must be positively proved that there was some valuable property in the package when it came under the control of the accused. 29 C. W. N. 260; 41 O. L. J. 87; 86 I. C. 38; 26 Cr. L. J. 662; 1925 Cal. 501.

—a constable dishonestly misappropriating the pay of the thana police, 3 W. R. 44, a clerk in a record room allowing the return of a document without an application on a stamped paper, 27 A. 260, a Postmaster paying to the holder of certain cash certificate at a lower rate and misappropriating the rest, 42 A. 204, an officer in the salt-department making a false entry in the account book and appropriating salt at a reduced price, 1 Weir 467, the directors of a bank paying false dividends out of the deposits thus causing wrongful loss to the depositors, 16 A. 88, was guilty under this sec.

—the law always regards the offences of criminal breach of trust with respect to public moneys as one of a specially serious nature as regards sentence. 106 I. C. 337, 29 Cr. L. J. 1.

—where the accused was charged with three offences under s. 477 A, and three offences under this sec. the trial was bad for misjoinder of charges. 18 C. W. N. 1152.

—to constitute an offence under s. 409 I. P. C. criminal intention is necessary which is a matter of inference from the facts proved. But it cannot be sustained with respect to the acts of an agent. 87 I. C. 962; 26 Cr. L. J. 1042; 1925 Oudh 676.

—when an agent produces his lists of accounts and admits the withdrawal of money, even if there is good ground for suspicion that he was not altogether honest, yet so long as there is no intention to misappropriate money belonging to his principal his prosecution under s. 409 I. P. C. for criminal breach of trust is not the proper remedy; the proper remedy lies in a suit for accounts in the civil court. 1930 Pat. 221; 1930 Cr. O. 429.

—the mere possession of the property is not sufficient to prove the offence without something to indicate the appropriation or conversion though long possession without any attempt to find the owner may amount to evidence of intention to do so. 1928 Bom. 205; 30 Bom. L. R. 624; 111 I. C. 730; 29 Cr. L. J. 922.

—s. 409 I. P. C. cannot be construed as involving that any head of an office who is negligent in seeing that the rules about remitting money to the treasury are observed, is *ipso facto* guilty of the offence of criminal breach of trust. Something more is necessary to bring home the dishonest intention which is one of the ingredients to constitute an offence under this sec. 1928 Bom. 205; 30 Bom. L. R. 624; 111 I. C. 730; 29 Cr. L. J. 922.

S. 409. (Criminal breach of trust by public servant or by banker, merchant or agent)—*contd*

—usually in a case under s. 409 I. P. C. the property in question is no longer existent or has passed from the dominion of the accused, but when the accused still retains dominion over the property and has some claim to it, even if it turns out not to be sustainable in law, there is no offence under s. 409 unless the claim is merely a pretence and not *bona fide*. 28 C. W. N. 831; 81 I. C. 829 25 Cr. L. J. 1053 : 1924 Cal. 908

—an investigation into whether a transaction was *benami* or not should not ordinarily be undertaken by a criminal court. *above case*

—criminal courts should not be invoked in respect of matters which should be investigated in a civil suit. 28 C. W. N. 850 : 82 I. C. 131 25 Cr. L. J. 1203 : 1924 Cal. 893.

—non-payment of money to person authorised to receive them for about a year raises the presumption of conversion to one's own use 1923 Lah. 566

—a conversion is none the less a conversion only because no cash passes 11 Lah. L. J. 384 : 30 Cr. L. J. 954 : 118 I. C. 650.

—managing director of Bank deceiving shareholders as to the real profits causing wrongful personal gain by falsification of balance-sheet is guilty under this sec. 1915 P. W. R. 23 : 29 I. C. 105 : 15 Cr. L. J. 478, 135 C. 450 : 12 C. W. N. 58 : 7 Cr. L. J. 378 ; 14 C. W. N. 82 10 Cr. L. J. 581 : 16 A. 88) *Dist.*

—when a debtor executes a *hundi* in favour of the Bank and the Managing Director pays off his own debt in discounting the *hundi*, held under the circumstance of the case there was no criminal misappropriation 164 P. W. R. 1915 : 29 I. C. 75 : 16 Cr. L. J. 443

—when an *Amin* collects money and does not pay it into court—
 presumption that he has mis-
 explain his conduct. 95 I. C.

—a *kahulyat* providing that he would realise rent and pay the same to the Government and in case of failure to do so the Govt. would realise the same from him and the *moujdar* collected rent but did not remit it and was prosecuted under s. 409 I. P. C., held that the position of the *moujdar* was that of lessee and he could not be convicted under this sec. 47 C. L. J. 442 : 110 I. C. 97 : 29 Cr. L. J. 641 : 1928 Cal. 321.

—where the accused was a tax *daroga* in the Municipality and embezzled money which he had received and failed to account for them he was guilty under this section and though the burden was initially on the prosecution, when the prosecution proved the receipt of money by the accused it was for him to show that he had not converted them to his own use. 45 C. L. J. 207 : 1927 Cal. 409 : 101 I. C. 597 : 28 Cr. L. J. 469.

—where the offence of embezzlement was *ex hypothesi* complete long before, anything done subsequently to help the

S. 409. (Criminal breach of trust by public servant or by banker, merchant or agent)—*contd*

to conceal the embezzlement does not amount to an abetment of an offence under s. 409 though it might be punishable under some other section of the Penal Code. 1928 Lah. 382, 1921 Pat. 286 Ref.

—an offence under this sec. should be tried where it is alleged to have been committed. 28 C. W. N. 850; 82 I. C. 131; 25 Cr. L. J. 1203; 1924 Cal. 893, 20 N. L. R. 72

—where the complainant residing in one place appointed the accused who was a resident of another place his agent for the sale of certain commodities at certain place and the accused misappropriated the sale proceeds, the court at the place where the complainant resides has not the jurisdiction to entertain a complaint under s. 409 I. P. C. 108 I. C. 901; 29 Cr. L. J. 453; 10 A. I. Cr. R. 92.

—wrong payments and wrong entries in books of account though may give rise to strong suspicion, cannot form the sole basis of a conviction under s. 409. Where money drawn by the Principal of a school for the payment of a bill due to a particular firm was misappropriated towards the payment of another

—where the accused in capacity of an accountant of a Municipality puts up cheques drawn to self for the Chairman's endorsement persuading the chairman who is ignorant of English that they were for contractors, draws the money from the treasury but cannot be convicted
: he was never entrusted
461; 1931 M. W. N. 399;

—a Forest Range Officer cannot be convicted for an offence under s. 409 I. P. C. for having allowed a license holder to cut growing teak trees instead of *aule-nathat* teak-timber because the offence was one committed in respect of immovable property. 1930 Rang. 158; 1930 Cr. C. 590; 8 Rang. 13.

—where entrustment of goods in respect of which the offence is committed is made to the firm and no personal entrustment of the goods is made to the manager of the firm the manager cannot be held criminally liable for breach of trust. 1930 Reng. 332; 1930 Cr. C. 1163.

—a President of a Co-operative Credit Society was authorised to draw a certain amount of money from a bank. Without crediting it to the Society he retained the amount himself with the permission of the fellow members, as he needed it for some work. Under the circumstance the offence committed, if any, was purely of a technical nature and the accused should be acquitted by the benefit of doubt being exercised in his favour. 12 Leh. L. J. 165; 1930 Cr. C. 1221; 1930 1045; 129 I. C. 256; 32 Cr. L. J. 274.

S. 409. (Criminal breach of trust by public servant or by banker, merchant or agent) —contd.

—the mere fact that on account of sheer timidity or on account of a desire to avoid running the risk of disgrace of criminal service, either the accused amount said to have been due, would not furnish any
10 Cr. C. 728; 7 O. W. N.

564
—the manager of a Court of Wards cannot be prosecuted in respect of any alleged misappropriation without the sanction of the Collector who appointed him 1931 Pat. 86; 130 I. C. 543; 32 Cr. L. J 555; 12 Pat. L. T. 421 1930 Cr. C. 206; A. I. R. 1931 Pat. 191; 12 Pat. L. T. 421

—under the provisions of a 497 Cr. P. C. a Magistrate has no power to grant leave to an accused in cases falling under s. 409 I. P. C. 1930 Rang. 335; 1930 Cr. C. 1151, 3 Rang. 538 *Rel on.*

Ss 410, 411. (Stolen property, dishonestly receiving stolen property).

—before the accused can be called on to account for the possession of stolen property there must be reason to believe that the property found in the accused's possession was stolen. 50 C. 564 72 I. C. 372; 24 Cr. L. J 372; 1923 Cal 596.

—the word "believe" in s. 411 is very much stronger than the word "suspect" and it requires to show that the circumstances were such that a reasonable man must have felt convinced in his mind that the property was stolen property. It is not sufficient to say that the accused was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient inquiry to ascertain how the property was acquired. 1928 Cal. 284, followed in 1929 Oudh. 213; 30 Cr. L. J. 969; 116 I. C. 759; 6 O. W. N. 208.

—a person has "reason to believe" a property to be stolen when the circumstances are such that a reasonable man would be led by a chain of probable reasonings to the conclusion or inference that the property was stolen property. 37 P. R. 1888.

—a conviction cannot be had under s. 411 until it is clearly proved that properties were stolen properties. 19 N. L. R. 176; 75 I. C. 544; 24 Cr. L. J. 960.

—the prosecution must prove both that the property was stolen and that the accused dishonestly received it.

Nag 40.

months cannot be convicted under s. 411 I. P. C. 1929 All

Ss. 410, 411. (Stolen property, dishonestly receiving stolen property)—*contd.*

119 I. C. 863; 30 Cr. L. J. 1133; 1929 Cr. G. 645, 36 P. W. R. 1911 Cr. Rel. on.

—but it has been held by the Punjab H. C. that it is not correct to say that to convict a person under s. 411 there must be proof of theft. 96 I. C. 869; 1926 Lah. 640; 27 Cr. L. J. 1013.

—there must be dishonest receiving or retaining. 19 P. W. R. 1914.

—where the property is stolen out of British India the accused who brings the property in British India, may be punished under this sec. in India, 30 P. R. 1891, 6 C. 307, 10 B. 186, 26 A. W. N. 52 but where the theft is committed in British India and the accused is found in possession of the property outside British India he cannot be punished under this sec. by the British Indian Courts 18 C. W. N. 1178.

—to constitute dishonest retention there must have been a change in the mental element of possession. 18 P. R. 1884.

—there may be dishonest retention without any guilty knowledge at the time of receipt. 4 M. H. C. Ap 42.

—a person dishonestly misappropriating the property cannot be guilty of dishonest retention, 8 L. B. R. 254. To convict for dishonest retention of stolen property it must be shown that the accused being in innocent possession acquired the knowledge that it was stolen and then retained it dishonestly. 31 P. R. 1879.

—when a stolen property is found in a house occupied by several persons, the house cannot be held liable, but the manager of a Hindu for the illegal possession of 598; 6 Cr. L. J. 23.

—manual possession is not necessary to constitute the offence. Where the consignee of railway goods presents the railway receipt to the station master and takes the formal delivery of some stolen articles he receives the articles within the meaning of this sec. 40 C. 990; 14 Cr. L. J. 318; 19 Ind. C. 1006.

—where the evidence does not show whether the properties were all received on one day or on different dates, no presumption can be drawn as to the date of receipt either way. 3 Pat. 503; 5 Pat. L. T. 318; 2 Pat. L. R. 131 Cr.; 81 I. C. 226; 25 Cr. L. J. 738; 1925 Pat. 20.

—where two properties are received on the same day, separate conviction is illegal. 83 I. C. 481; 26 Cr. L. J. 1; 1925 Oudh. 298.

—where properties stolen at different places are produced by the accused he can be convicted separately of receiving stolen property. 96 I. C. 120; 27 Cr. L. J. 872.

—s. 562 does not apply to a case under s. 411 I. P. C. 1 Pat. L. R. 174; 1923 Pat. 237.

—where stolen property was found in a shed belonging jointly to three brothers and in the charge of a servant and the evidence showed that the accused was living some miles away and used to

Ss. 410, 411. (Stolen property, dishonestly receiving stolen property)—*contd.*

visit it only occasionally, a conviction under s. 411 is bad. 74 I. C 271 : 24 Cr. L. J. 767.

—where all the accused were found in a house on one day disputing as to what was to be done with the booty and a dozen people were seen discussing as to how the booty was to be divided, it was sufficient to sustain a conviction under ss. 411 and 414 I. P. C. 94 I. C. 703 : 7 Pat. L. T. 567 : 27 Cr. L. J. 657 : 1926 Pat. 316.

—there cannot be receiving when the exclusive possession remains with the thief. 4 M. L. T. 415.

—false claims to property does not amount to receipt of property. Ret. Un. Cr. 416.

—property obtained in exchange of stolen property is not stolen property. 39 P. R. 1881, 24 W. R. 33.

—mere suspicion of the accused is not enough to constitute receiving stolen property. 39 P. R. 1881, 26 P. L. R. 165, nor his erroneous belief, 41 Cr. Rul. 1888. Ret. Un. Cr. 389, knowledge of the accused must be proved. 32 P. L. R. 1905. 2 Cr. L. J. 189.

—the receiver need not know who stole the property. 23 A. 266.

—receiving property stolen by child who is discharged under s. 83 I. P. C. is punishable. 6 M. 373.

—evidence of the accused being a habitual receiver of stolen property will not suffice, particular case must be proved. 9 A. L. J. 370 : 13 Cr. L. J. 254. 14 Ind. C. 606.

—identity of the property must be proved, resemblance will not do, 1 P. L. T. 727, 194 P. L. R. 1912, 35 P. W. R. 1912, Ret. Un. Cr. 227, it is generally impossible to identify sweats, 35 P. W. R. 1912. 194 P. L. R. 1912. 13 Cr. L. J. 720 : 16 Ind. C. 528, 22 P. W. R. 1912. 13 Cr. L. J. 555 : 15 Ind. C. 971, or goods of common pattern. 1923 Lab. 36.

—possession raises a presumption of guilt unless explained by the accused. 25 W. R. 10, 9 Bom. L. R. 27, 13 W. R. 26, 34 P. W. R. 1914. 15 Cr. L. J. 354 : 25 Ind. C. 932, 1923 Lab. 80.

—but the mere fact of possession of stolen property is not in all cases sufficient to warrant the inference that the accused was in possession of it dishonestly and to cast upon him the onus to displace the inference of dishonesty, 1930 Pat. 353 : 122 I. C. 586. 1930 Cr. C. 584 : 31 Cr. L. J. 437.

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—when a stolen property is found in a house occupied by several persons every occupier of the house cannot be held liable. 19 M. L. J. 30, 22 A. 445, 2 U. P. L. 12, but the manager of a Hindu joint family is *prima facie* responsible for the illegal possession of stolen property. 1 P. L. T. 431, 29 A. 598. 6 Cr. L. J. 23.

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of the fact that the accused does not follow that he came by the goods

the court is entitled to draw unfavourable inferences in case of refusal of possession and to draw unfavourable inferences in case of refusal

Ss 410, 411: (Stolen property, dishonestly receiving stolen property)—*contd.*

to disclose such facts. 81 I. C. 443 : 25 Cr. L. J. 907 : 1924 Rang 256,

—but such possession raises presumption of theft only. 13 M. 426, 23 W. R. 16, 42 P. R. 8157, 18 P. R. 1884.

—if the possession is not recent no presumption will arise. 11 C. 160, 1912 M. W. N. 529, Rat. Un Cr. 594 : 13 Cr. Rul. 1892.

—to give rise to any presumption the possession of stolen goods must be possession soon after the theft, or the stolen goods must have been recently stolen 22 C. W. N. 597, 30 C. L. J. 310, 24 C. W. N. 619, 81 I. C. 48 : 25 Cr. L. J. 560.

—when the possession was for seven months no process was issued against the alleged accused 17 C. W. N. 1129, 1912 M. W. N. 362 : 11 M. L. T. 186, 1923 Lah. 687 : 103 I. C. 912, 29 Punj. L. R. 441 : 29 Cr. L. J. 464.

—what is recent possession is a question of fact to be determined by the circumstances of the case. 1912 M. W. N. 971, 11 C. 160

—the presumption under s. 114 Ill. (9) of the Evi. Act is by itself not sufficient, without other evidence to convict the accused who is found to be in possession of stolen animals nine months after it was stolen 1931 Pat. 85 : 12 Pat. L. T. 350. A. I. R. 1931 Pat. 208 : 130 I. C. 800. 1931 Cr. C. 205.

—the mere fact that the accused person points out the place in which stolen property is concealed does not give rise to any presumption under s. 114 Evi. Act or justify his conviction of the offence of receiving stolen property, but that presumption would arise when the accused is not able to account for his possession of such stolen articles. 1930 Bom. 244. A. I. R. 1930 Bom. 444 : 126 I. C. 876 : 31 Cr. L. J. 1104 : 1930 Cr. C. 696. 32 Bom. L. R. 574

—there cannot be any hard and fast rule as to the limit of time within which the stolen article should be found with the accused to make him guilty under this sec. but two and a half months were not held to be long time in this case. 103 I. C. 62 : 1927 Oudh 277 : 28 Cr. L. J. 638, 29 A. 138 Dist.

—but the suspicion raised by possession cannot be sufficient for conviction 10 C. W. N. 219 : 3 Cr. L. J. 195, 6 A. 224.

—the possession must be clearly traced to the accused 6 B. 731.

—where the accused are proved to be in possession of more goods than had been established to have been stolen property and they are found in a room accessible to all the members of the joint family, a conviction cannot be had under s. 411 I. P. C. 23 A. L. J. 431. 47 A. 511 : 26 Cr. L. J. 1022 : 1925 All 478.

—where the only evidence against a woman was that the property was found in the house where she lived with her husband, the offence was not established because the evidence pointed to the possession of the husband rather than that of the wife. 5 N. W. P. 120

Ss. 410, 411. (Stolen property, dishonestly receiving stolen property)—*contd.*

—a boy of 14½ years convicted under s. 411 1. P. C. cannot be let off after mere admonition but 6 months' rigorous imprisonment also is not proper punishment inflicted on a youthful first offender. Under the circumstances of the case a security for good behaviour for 1 year was thought to be sufficient. 6 Pat. L. T. 294; 1 Pat. L. R. 177; 1923 Pat. 297.

—in the absence of anything to connect the husband with the possession of stolen property he cannot be convicted of an offence under s. 411 in respect of stolen property found in the possession of the wife. 20 A. L. J. 162; 1922 All. 83 67 I. C. 338; 23 Cr. L. J. 386.

—whether the fact of the accused pointing out stolen property is or is not evidence of possession is a question of fact. 1930 Sind. 168 24 S. L. R. 338. 1930 Cr. C. 654; 126 I. C. 53

—mere showing the place of concealment of stolen property is not sufficient to entitle the court to find that the person who pointed out had received the property or retained it knowing it to be stolen, there must be some evidence of concealment of the article
7, 315 P. L. R.
1912 A. W. N.
J. 28-13 Ind.

L. J. 439

—but where the accused know that a considerable amount of stolen property is buried in the ground and produce the same but falsely state that they had pointed out the property on the instructions of the police who had themselves buried the property
knowledge and
s. 411 1. P. C.
61 C. 53, 5 S. L.

the accused's
ty to be stolen

property. 100 101

—conviction under s. 411 does not stand if there is no evidence to show that the property has been actually stolen 2 N. W. P. 187, 50 C. 564.

—It is of the essence of an offence under s. 411 to show that the person who was in possession of the stolen property knew or had reason to believe that it was stolen property. Where the stolen property was traced to the accused's possession

Ss. 410, 411. (Stolen property, dishonestly receiving stolen property)—*contd*

months after the theft there is no presumption against him under s. 114 Evi. Act. 41 M. L. J. 213, 32 M. L. T. 318: 72 I. C. 533: 24 Cr. L. J. 426

—the mere finding of stolen property with the accused three years after the theft does not indicate dishonest intention within s. 411. 1923 Lah 460.

—when stolen properties of several thefts are found with the accused person at one search and there is no proof of distinct acts of receiving he cannot be convicted for more than one offence. 4 P. W. R. 1907: 5 Cr. L. J. 122, 15 A. 317.

—where the accused is found in possession of properties identified as belonging to different owners he should not be convicted of several offence in respect of those properties unless there is evidence to prove that they were received by him at different times. 1928 Lah 637: 29 Punj L. R. 541: 110 I. C. 673: 29 Cr. L. J. 737, (15 A. 317, 45 A. 485, 15 C. 511, 50 C. 564) *fol* (26 P. R. 1889 F. B., 96 I. C. 120) *Diss from*

—different persons retaining different stolen properties separately though proceeds of the same theft, cannot be tried together as the offences are not committed in the same transaction. 33 C. 1256, 29 B. 449: 7 Bom. L. R. 527.

—joinder of charges of receiving stolen property and theft, against different accused is had, 46 C. 741, 1 C. W. N. 35, 149 P. L. R. 1903 and also the same person cannot be separately punished for both the offences, as they form one and the same transaction. 2 W. R. 63, 11 W. R. 12, 1 W. R. Cr. 2.

—where the Magistrate convicted the accused of offences under ss. 411 and 414 I. P. C., and passed separate sentences to run consecutively the conviction and sentence was sustainable under s. 35 Cr. P. C. as amended by Act XVIII of 1923. 1928 Bom 145: 30 Bom. L. R. 383: 109 I. C. 368: 29 Cr. L. J. 544: 10 A. I. Cr. R. 159

—where an accused is acquitted of a charge of theft and the property found with him is not proved to be the subject of theft he is entitled to recover the property but where the property is found to be subject of theft and there is not sufficient evidence to support a conviction though the guilt of the accused is indicated by the evidence, and owing to lapse of time the property has passed into the hands of others, the court will refuse to restore the property to the accused. 44 C. L. J. 205: 1927 Cal 61: 99 I. C. 91: 28 Cr. L. J. 59.

S. 412. (Dishonestly receiving property stolen in the commission of a dacoity.)

—when an accused is convicted under s. 412 I. P. C. maximum penalty cannot be awarded on him presuming his knowledge of the nature of the dacoity under s. 114 Evi. Act. 32 C. L. J. 19

—to support conviction under this sec. for that the accused knew the property to be stolen property. It must be proved that they knew or had reason to believe that its possession had been

S. 412. (Dishonestly receiving property stolen in the commission of a dacoity) -*contd*

transferred by the commission of dacoity or that being stolen property they received it from a person who they knew or had reason to believe belongs or belonged to a gang of dacoits, Rat Un Cr 756 19 Cr Rul 1895, and unless the above conditions are fulfilled a confession by the accused made in pure ignorance of law will not suffice 1 U B R. 1897-1901, 72

—the accused must account for the possession of the property belonging to another. 13 W. R. 26.

—where the evidence of the guilt of the accused rests upon the discovery of stolen property from his possession the proper course for the Judge is to direct the jury that they are entitled to take the explanation offered by the accused of their possession; the claim by the accused need not be atricilly proved. 53 C 157: 42 C L J 212: 1925 Cal 1241. 26 Cr L J. 15 82. 90 I C 542, (52 C. 233, 31 C L J 310) *Ref.*

—the mere fact that the accused person points out the place in which stolen property is concealed does not give rise to any presumption under s 114 Evi. Act or justify his conviction of the offence of receiving stolen property. But such presumption would arise when the accused is not able to account for his possession of such stolen articles 1939 Bom. 244: A. I. R. 1930 Bom. 444: 126 I. C 876: 31 Cr L J 1104: 32 Bom L. R 574: 1930 Cr. C 694.

—the presumption that a person in possession of goods obtained by theft is aware of that circumstances is not confined to charges of theft only but extends to all charges, however penal, not excluding even murder 1930 Pat. 513: 9 Pat 606 A. I. R. 1931 Pat 9 128 I C 121. 32 Cr. L. J 72 1930 Cr C. 1009. 11 Pat. L. T. 867, 13 M 426 *Ref.*

—this sec does not refer to the actual dacoits. Rat Un. Cr. 312 Cr. R 65 of 1886

—a sentence of transportation under this sec cannot exceed ten years 5 W. R. 16

—the property must be received in British India 9 A. 523, 2 L. L. J. 348

—when dacoity was committed in the Gayakward territory and stolen property was found concealed by the accused in British Territory, conviction under s 412 was upheld 1 B 50

—mere possession of stolen property of trifling value does not warrant the presumption that the receiver knew it to be proceeds of a dacoity 18 W R Cr. 25.

—the bare fact of finding stolen property and arms in the house
possession on the part
basis for a conviction

s 412 are illegal Rat.
W. R. 48. 5 W. R. 66.
note), W. R. Cr. 5

S. 412. (Dishonestly receiving property stolen in the commission of a dacoity)—*contd.*

—a receiver of the property of trifling value stolen at a dacoity should not be treated in the same manner as if he was one of the actual dacoits. 103 I. C. 62 : 28 Cr. L. J. 63, 638 : 1927 Oudh 277.

—where accused has already been convicted under s. 411, a subsequent trial for an offence under s. 412 in respect of certain other property found in the possession of the accused at one and the same time is illegal. 53 I. C. 481.

S. 413. (Habitually dealing in stolen property.)

—a person cannot be said to be a habitual receiver of stolen properties who may receive the proceeds of number of different robberies from a number of different persons on the same day. 19 C. 190.

—a person cannot be tried at the same trial under ss. 411 and 413. 8 C. 634.

—prosecution under s. 401 I. P. C. which was based mainly on the statement of the approver having failed trial under s. 413 based entirely on the discovery of stolen property was not barred by s. 403, (1) as it was not on the same facts. 88 I. C. 185 : 26 Cr. L. J. 1077 : 26 Punj. L. R. 470 : 1925 Lah. 537.

S. 414. (Assisting in concealment of stolen properties.)

—under this sec. owners of the property need not be traced. All that is needed is to show that the accused voluntarily assisted in concealing or disposing of the property which he had reason to believe to be stolen property. 14 Bom. L. R. 893 : 1 Bom. Cr. O. 189 : 13 Cr. L. J. 793 : 17 Ind. C. 537.

—for a conviction under s. 414 it is not necessary that the property be

—“disposing of” must be interpreted in the light of the words “concealing” and “making away with,” it cannot mean restoring to the owner. 1 A. 379, (1910) U. B. R. P. C. 8.

—the words “reason to believe” signify that it is not sufficient to show that the accused person was careless or that he had reason to suspect that the property was stolen or that he did not make sufficient enquiry. 6 B. 402, 1913 M. W. N. 696.

—the nature of the property and the circumstances under which it was made away with must be considered. 2 B. H. C. 130.

—pointing out the place and confession before the police are not sufficient to convict the accused, some independent proof is necessary. 21 P. R. 1908.

—the same person cannot be convicted under ss. 379 and 414. (1885) S. L. J. 334.

—charges under ss. 411 and 414 should be made alternatively and not cumulatively, 10 Bom. L. R. 125, 28 A. 313 and only one sentence should be passed. 28 A. 313, Rat. Un. Cr. 449 : 8 Cr. Ry. 1889 Rat Un Cr 558.

Sec. 415. 417. (Cheating, punishment).

—in order to prove the offence of cheating it is necessary to establish (1) that some one was deceived, (2) fraudulently, or dishonestly, or intentionally, and (3) by means of such deceit he was induced to change his position either by parting with property or by doing something to his own injury, 26 Bom. L. R. 211 : 7 Bom. Cr. C. 139 : 81 I. C. 926 25 Cr. L. J. 1102. 1924 Bom. 303, 18 N. L. R. 52 : 67 I. C. 619 : 23 Cr. L. J. 443.

—the words "and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation, or property", refer to the second part of the sec. and not to the first part. 18 P. W. R. 1408.

—this sec. does not apply if third person sustains any loss in consequence of the accused's act. Rat. Un. Cr. 2, 1846

—in order to bring a case within the first part of the sec. it is essential in the first place, that the person who delivers the property should have been deceived before he makes the delivery and in the second place, that he should have been induced to do so fraudulently or dishonestly. 2 C. L. J. 524 : 3 Cr. L. J. 160, 17 C. W. N. 379 16 C. L. J. 453 13 Cr. L. J. 897. 17 I. C. 993

—where a person makes a false document, a bond, with the object of inducing another person by means of the counterfeit bond to pay his debt and then by means of the genuine registered bond to sue him for the money and to recover it from him twice, he is guilty of cheating. 2 C. L. J. 524

—however immoral a deception may be, it does not constitute the offence of cheating, if its object is only to cause a distribution of property which the law recognizes as rightful, there must be an intention to acquire or retain wrongful possession of that to which some other person has a better claim, *abote case*

—to constitute the offence of cheating, there must be a deception which must precede and induce under the first part of the sec., the delivery or retention of property, or the act of omission referred to in the second part, the deception may be by words or conduct, and as to what is sufficient to constitute deception under this sec. must be decided in each case on its own facts, *abote case*

—to constitute the offence of cheating "damage or harm" must be the necessary consequence of the act done by reason of the deceit practised or must be, necessarily, likely to follow therefrom 17 C. 606 26 A. 380.

—in a case of cheating the court is to see the intention of the accused at the time of the commission of the offence and judge of the consequences of the act or omission itself. The "damage or harm" must be the necessary consequence of the act done by reason of the deceit practised or must be necessarily likely to follow therefrom and the law does not take into account remote possibilities that may follow from the act. The proximate and natural result only of the act has to be judged and not any vague and contingent injury that may possibly arise. 40 C. L. J. 283, 17 C. 606, 22 C. N. 1001, 51 C. 250 *fol.* 4 Bom. L. R. 76 *dist.*

Ss. 415, 417. (Cheating, punishment)—contd.

—mere breach of contract to give in marriage of a girl does not give rise to a criminal prosecution. 1930 Pat. 501: 1930 Cr. C. 932.

—where the mortgagor assured the mortgagee that the mortgaged property was free from encumbrance and there was no defect in title but it subsequently transpired that the mortgagor had previously executed a *fars* deed of sale but he continued to hold the property as if it were his own, he is guilty of cheating.

—"fraudulently" together with the word "dishonestly" means something different from "dishonestly", the word is not confined to transaction in which there is wrongful gain on the one hand, or wrongful loss on the other, either actual or intended, the word "defraud" may or may not intend deprivation, either actual or intended. 32 C. 775: 1 C. L. J. 469: 9 C. W. N. 807: 2 Cr. L. J. 368.

—this section does not in any manner limit the mode in which the deception may take place, nor it is necessary that the deception should be by express words but it may be by conduct. 32 C. 941: 9 C. W. N. 1006: 2 Cr. L. J. 764, 10 P. W. R. 1912: 13 Cr. L. J. 456: 15 Ind. C. 88 Fpl. 15 C. L. J. 515 Dis

—where the accused falsely represented himself to be a member of a firm and induced the pleader of the firm to write a letter on behalf of the firm cancelling a certain contract and thus caused injury to the pleader in mind and reputation, the accused was rightly convicted of attempt at cheating. 7 C. L. J. 375 F. B.

—where the accused in order to create a false evidence of payment of a debt, filed a registered envelope with blank sheets of paper and posted it to the complainant after insuring for Rs. 630 and the complainant gave an acknowledgment of receipt of the parcel to the Post office on receiving the same, held that these facts amounted to an attempt to cheat. 1 Pat. L. J. 391.

—a person who sends an insured cover purporting to contain Govt. currency notes, but which on receipt by the addressee is found to contain only a letter advising the despatch of notes and pieces of paper, is not guilty of cheating. 50 C. 849: 2 C. W. N. 252: 73 I. C. 780: 24 Cr. L. J. 684, similar case, 51 M. L. J. 800: 24 I. W. 725: 99 I. C. 102: 1927 Mad. 199, wherein it has been held that to satisfy the definition of cheating there must be immediate causation and the act itself must involve the probability. It is not enough to say that the signed acknowledgment is likely to be used to cause damage, the act of signing itself must be likely to cause damage. It cannot also be said to be attempt to cheat because there cannot be attempt unless the actual transaction has commenced.

—where a debtor on being pressed by his creditor promised to send him money in insured cover and when the insured cover was

Ss. 415, 417. (Cheating, punishment)—contd

opened by the creditor it appeared to contain *Khilafat* notes,

tion, held that though the petitioner was deceived and thereby induced to take bets on credit from the opposite party, the act which the petitioner was induced to do by reason of such deception did not cause nor was likely to cause damage or harm to him in body, mind, reputation or property, hence no criminal offence was committed. 27 C W. N. 919. 39 C. L. J. 273; 74 I. C 76; 24 Cr L J. 748, 1923 Oudh 292. 110 I C. 209. 29 Cr L. J. 657; 10 A. I Cr R 445

—the giving of a cheque as payment does not amount to a representation that the person giving the cheque has money to the amount in the bank but it amounts to a representation that the drawer has authority to draw on the bank for that amount and that

—the representation must be shown to be false to the accused's knowledge 15 Bom. L R 297. 2 Bom Cr C 48

—an illegal demand if not fraudulent does not constitute cheating, fraudulent intent is necessary 15 C L. J. 515, 17 C. W. N. 294 14 Cr. L J 120 18 Ind C 680.

—a person may be guilty of attempt to cheat although the person he attempts to cheat is forewarned and is not cheated. 16 C. 310.

—an attempt to deceive by a false representation of facts, involves that the person charged should have taken some steps towards the communication of the representation 8 C W. N. 278; 1 Cr. L. J. 124. F. B.

—the evidence must establish the fraudulent or dishonest intention at the time of the commission of the act. 12 A L J 1258.

—it is for the prosecution to prove in a case of cheating that the accused has deceived by making a false and dishonest representation and not for the defence to show that he had not acted dishonestly 15 A L J 807.

—where a person advertising goods praised them unduly and were
29.

used
the delivery of property was a promise to do a criminal act
an act forbidden by law and one which could not form a
of action in a civil court. 10 B. L. T. 255.

Ss. 415, 417. (Cheating, punishment)—*contd.*

—hiring any articles by making false statement and then attaching it in execution of decree, 3 N. W. P. 16, receiving money orders from intending customers by making false advertisement of a book, 13 M. 27, obtaining advance on a promise to supply goods and then absconding, 6 L. B. R. 88, mortgaging property after an execution sale of the same representing that he has interest in the property, 114 P. L. R. 1912, inducing a person by assuring the honesty of another to advance money, 18 A. L. J. 871, constitute an offence under this sec.

—but where no wrongful loss was caused to the complainant who was induced to bid a mare up to what he considered to be the full value of the mare, there was no offence under this sec. 17 A. L. J. 1258.

—where a registered opium customer got license to purchase opium in one of his names and another license in the other of his names and thereby obtained more opium than he would have done otherwise, he committed the offence under this sec. 22 C. W. N. 1001

—to constitute the offence there must be damage or harm to the complainant in body, mind or reputation. 12 C. W. N. 750.

—where the cheating is in concealment, it must be shown that *suppression veri* was a violation of a legal duty or it was an illegal omission in fact. 27 A. 561, 18 A. L. J. 408, 17 A. L. J. 500

—false statement in a bill without the intention to defraud does not amount to cheating. 5 C. W. N. 255.

—trying to obtain a duplicate certificate from the Registrar of the University in the name of a false person is not cheating as there was no proof of harm or damage to any person, 25 M. 726, *disapproved in* 28 M. 90, *Contra* 12 M. 151, 25 C. 512 F. B. 15 A. 410.

—fraudulent entry in book of account is attempt to cheat. 12 M. 114

—purchase by a public servant at an auction sale a quantity of waste paper bidding for it under an assumed name is not cheating. 23 A. W. N. 231.

—where the accused took money from the complainant to conduct a business on his own account and pay interest and a commission at one anna per maund of rice sold, but the accused failed to deliver within the stipulated time and converted a small portion of the money to his own use in paying off his own debt, held he was not guilty of cheating. The important question to be considered was whether the accused when he took over the money had any intention of performing the contract. 10 C. W. N. 1005.

—where a thumb impression is taken on a blank piece of paper but nothing is written on it there is no dishonest intention shown and no offence of cheating is committed. 91 J. C. 353: 7 Pat 1 T 772. 1926 Pat. 267: 27 Cr. L. J. 609

Ss. 415, 417. (Cheating, punishment)—*contd.*

—non-payment of balance of consideration of a sale deed is a dispute of civil nature and there is no offence of cheating. 43 C. L. J. 237: 94 I. C. 204: 27 Cr. L. J. 588.

—the accused had executed a *Kobala* in favour of the complainant and presented it for registration but took it back from the Sub-Registrar before registration on the pretext that he could not understand whether it was a mortgage or a *Kobala* and tore it to pieces, held that the charge of cheating could not be maintained as the person cheated was the Sub-Registrar and he did not complain. 30 C. L. J. 175

—certain retail dealers induced their creditors to give time, and soon after vacation intervened and they removed the goods, held they were guilty of cheating. 23 A. L. J. 433.

—where by the deceitful and fraudulent acts and manipulations of the accused a Railway Company was deceived and induced by the Coal Mining Company to give a lease of land adjoining a colliery, the Railway Company cannot be said to have suffered any property; but a pecuniary loss since the land was not paid for. 51 C. 250: 1924 Cal. 494 (2 C. 9 C. W. N. 764, 12 C.

even if a "decree" is passed, it does not deliver any property within the meaning of ss. 415 and 420 I. P. C. 28 C. W. N. 414 39 C. L. J. 122. 81 I. C. 810 25 Cr. L. J. 1034: 1924 Cal. 502.

—to convict a person for cheating, it is necessary to show that there is a proximate connection between deception practised on the complainant and his being induced to part with some property. If the connection is too remote or very indirect the offence of cheating would not be complete. 83 I. C. 997. 26 Cr. L. J. 213: 21 A. L. J. 873: 1924 All. 209.

—where serious charges of fraud are made the facts must be sworn to by the person who alleges them. It is absolutely essential that there should be clear evidence to defraud or cheat. Where there is some suspicion regarding the conduct of the accused but there is no evidence of a *prima facie* case of cheating, criminal prosecution would not lie. 53 C. L. J. 457 1931 Cal. 452-1931 Cr. C. 604.

—proximate and natural result and not a vague and contingent one is to be taken into account. 52 C. 188 1925 Cal. 100: 85 I. C. 641 26 Cr. L. J. 545.

—a cheque issued at Gaya was dishonoured by the Bank of Calcutta and the fact of such dishonouring reaching the complainant at Butan, held a prosecution could be initiated at Gaya, Butan

Ss. 415, 417. (Cheating, punishment)—*contd.*

Calcutta. It is open for the H C to transfer a complaint for cheating filed at one of the places to another, if under the circumstances such a step is necessary in the interests of justice. 76 I. C. 17: 25 Cr. L. J. 81: 1924 P 708.

—in theft the original taking is without honesty and without the consent of the owner. In criminal breach of trust the original taking is with honesty and with the consent of the owner. In cheating the taking is dishonest but with the consent of the owner but in criminal misappropriation the taking is honest but without the consent of the owner. 1928 Nag 113: 29 Cr. L. J. 86: 106 I. C. 678. 9 A. I. Cr. R. 282.

—s. 417 deals with and prescribes punishment for simple cheating but sec. 420 deals with and prescribes punishment for the aggravated form of offence of cheating, which involves delivery of property or destruction of valuable security. 20 L. W. 919: 32 I. C. 57: 25 Cr. L. J. 1183.

Jurisdiction.

—the expression "deliver any property to any person" includes delivery to an agent for that purpose. Where in pursuance of an order from the consignee at Hyderabad for four boxes of tea the accused sent from Madras four boxes of saw dust and the consignee paid the value to the Post Office at Hyderabad, held that the deceit and the delivery in consequence thereof were complete when the money was paid to the Post Office and subsequent delivery by the Post Office to the accused was not a necessary ingredient of the case, so the case was triable at Hyderabad and not at Madras, 101 I. C. 484: 23 Cr. L. J. 452: 52 M. L. J. 511: 1927 M. W. N. 221.

S. 418, 419. (Cheating by personation, punishment).

—a person who represented a girl to be the daughter of one woman when the girl was within knowledge the daughter of another woman, was guilty under s. 416 I. P. C. 7 W. R. Cr. 51.

—where a person induced another to part with money in consideration of marriage, by representing a girl to be a Brahman, while she was Sudra, he was guilty of cheating under s. 416 I. P. C. 16 W. R. Cr. 42.

—where the accused palmed off two girls as women of a much higher caste than they really were and married them to two Rajputs, after receiving the usual bonus, he was guilty under ss. 415 and 416 and not under s. 373 I. P. C. 7 W. R. Cr. 55.

—where the accused falsely represented himself to be A, at a University examination, got a hall-ticket and handed and signed answer-papers to questions with B's name, he was guilty of forgery and cheating by personation. 12 M. 157.

—false advertisement and receiving money from the Post office in the name of a false person constitutes the offence of cheating and forgery. 13 M. 27.

Ss. 418, 419. (Cheating by personation, punishment)—*contd.*

—a witness deposing in another's name is not guilty of cheating by personation. 1 Bnm. H. C. R. 89, nor purchasing stamped paper in another name. 3 B. H. C. R. 42

—a person travelling with a forged Railway pass but not proved to have shown to any Railway officer before the completion of his journey can only be convicted of an attempt under ss. 419 and 511 I. P. C. 21 M. L. J. 748.

—where A intended to register a deed but was too ill to do so and B who was known to A personated A and had the deed registered in her name, held that in the absence of anything to prove that it was intended to defraud any body A was not guilty of cheating by personation. 11 W. R. Cr. 24 2 B. L. R. A Cr. 25, 17 C. 606

S. 420. (Cheating and dishonestly inducing delivery of property).

—the word "property" includes money 32 C. 22: 8 C. W. N 784.

—In order to bring a case within sec 420 I. P. C. there should be present in the facts alleged against the accused the ingredients mentioned in S. 415. The person deceived should deliver property. 39 C. L. J. 122: 28 C. W. N 414: 81 I. C. 810.

—the offence under this section does not consist merely in a fraudulent or dishonest representation but also requires the delivery of property by the person deceived 1931 Pat 102: 130 I. C. 796: A. I. R. 1931 Pat. 201: 12 Pat. L. T. 12: 1931 Cr. C. 230.

—an indictment for cheating under ss. 415 and 420 should state that the property obtained was the property of the person defrauded. An indictment defective in this respect is defective for uncertainty and must be objected to if at all, before the jury is sworn 1 Mad. H. C. R. 31.

—an offence under this section is more serious than that under s. 417 I. P. C. 1925 Mad. 367. 25 Cr. L. J. 1193.

—a Railway employee who has handed over a free intended for his family to a stranger is punishable under this and not under s 112 of the Railway Act. 2 O. W. N. 510: 12 C. J. 508: 28 I. C. 524: 26 Cr. L. J. 1164

S. 420. (Cheating and dishonestly inducing delivery of property)—*contd.*

—where a person forged a payment cheque of the civil court and presented it to the treasury and the accused a Muktear identified the payee and it was found that he was not a party to the swindle a conviction under s. 182 or 420 was not sustainable. 44 C. L. J. 230 : 1927 Cal. 78.

—inducing to part with shares making a false promise to pay for is an offence under this sec. 25 C. W. N. 618.

—to bring the case under s. 420 dishonesty in the transaction must be proved. 40 C. L. J. 283, 102 I. C. 553 : 28 Cr. L. J. 585, 28 P. L. R. 171, 28 Punj L. R. 171 : 102 I. C. 555 : 28 Cr. L. J. 585 : 1927 Lab 746.

—to constitute an offence under s. 420 it must be shown that deception has been practised and that by that deception a person has been fraudulently or dishonestly induced to part with property. 69 I. C. 152 : 23 Cr. L. J. 664, 63 I. C. 621 : 23 Cr. L. J. 589 : 1922 Nag. 195

—mere silence may amount to deception. 52 C. 347 : 29 C. W. N. 447 : 1925 Cal 14 : 26 Cr. L. J. 401 : 84 I. C. 1041.

—deception may be practised by representation made through an innocent agent. It may be not by express words but by conduct or it may be implied in the nature of the transaction itself. 101 I. C. 458 : 1927 Sind 161 : 28 Cr. L. J. 426.

—where the accused passed himself off as a police officer and cheated several villagers out of money, he was guilty of cheating and falsely personating a public servant, 2 W. R. Cr. 29.

—where a prostitute committed adultery with a man : sexual 417 and

—inducing him to the

money,

the accused was guilty of an attempt to cheat under this sec. but not under s. 503 or s. 508 I. P. C. 48 M. 774 : 1935 Mad. 480 : 26 Cr. L. J. 756 : 86 I. C. 339 : 1925 M. W. N. 113 : 48 M. L. J. 190.

—in a criminal prosecution for cheating where an accused is alleged to have played the part of the confidence man, it must be shown that the accused was putting forward what he knew to be false and was in most cases sharing the proceeds 81 I. C. 80 : 25 Cr. L. J. 592.

—the mere fact that a creditor who has already received payment of his dues subsequently denies the payment and sends a notice claiming the money as still due will not show that he is guilty of cheating under s. 420 or that he practised any deception when he originally received payment. 82 I. C. 479 : 25 Cr. L. J. 1311.

—there can be attempt to cheat and thereby induce the delivery of property etc. as mentioned in s. 420 and so a person can be convicted of an attempt to commit an offence under s. 420. 77 I. C. 837 : 25 Cr. L. J. 475 : 1924 Nag. 120.

S. 420. (Cheating and dishonestly inducing delivery of property)—contd.

—an attempt to commit an offence is punishable under s. 511 though the final act short of actual commission of that offence has not been accomplished; making a false claim to the currency office for the value of the lost currency notes and swearing affidavits testifying the ownership of the notes amounts to attempt to cheat. 10 Lah. 253: 1928 Lah. 551: 110 I. C. 812: 29 Cr. L. J. 780: 30 Punj. L. R. 405, (15 A. 173, 16 C. 310) *fol.* 16 A. 409, 14 P. R. 1914 Cr. Ref. 8 A. 303, 45 P. R. 1889 Cr. Dist.

—where a person whose godown had been insured against fire made exaggerated claim for loss by fire, he was guilty of the offence of attempt to cheat, 82 I. C. 39: 25 Cr. L. J. 1175: 1924 R. 241: 3 Bur. L. J. 1. and in case of conspiracy to cheat the Insurance Company under similar circumstances the offence may be of abetment of the attempt to cheat, *above case*.

—the accused having no account of Bank drew a cheque in favour of a vendor of goods as if in payment of the price and signed the cheque with name other than his real name, The cheque was dishonoured and it was found that the accused had drawn the cheque to induce the vendor to deliver the goods. The accused was guilty under s. 420 I. P. C. and not under s. 641 I. P. C. 40 C. L. J. 256: 1925 Cal. 14

—a person who takes property under a hire-purchase arrangement but sells it before the instalments are fully paid, commits criminal breach of trust. 45 A. 588: 73 I. C. 508: 24 Cr. L. J. 620.

—denial of payment by creditor is not punishable under this sec. unless it is proved that the payment was received with the pre-conceived intention of denying it later on. 1923 Lah. 621.

—non-payment of balance of consideration of a sale deed is a dispute of civil nature and there is no offence of cheating. 43 C. L. J. 287: 94 I. C. 204: 27 Cr. L. J. 588.

Charge.

—exact date of the commission of the offence should be mentioned in the charge. But if the omission to give exact date does not materially prejudice the accused a conviction should not be set aside on that ground. 96 I. C. 221: 1926 Pat. 347: 27 Cr. L. J. 909.

—where the charge was formulated in the words "by deceiving with false representation and promises as well as by conduct," it was held to be too vague and indefinite to give the accused proper notice of the manner of the deceit and was as wide as might include almost anything. 29 C. W. N. 408: 41 C. L. J. 172. 1925 Cal. 603: 26 Cr. L. J. 849. 86 I. C. 705.

—but where the accused did not appear to have been prejudiced in any way by the charge which did not correctly set out the facts of the case for the prosecution and the defect was material one, the trial was not vitiated as the accused understood exactly what the case against him was. 29 C. W. N. 483: 1925 Cal. 674. 26 Cr. L. J. 906: 86 I. C. 970.

S. 420. Punishment.

—the words “shall be punished with imprisonment and *shall also be liable to fine*” mean that in case of conviction some sentence of imprisonment must be given and the court has a discretion to add or refrain from adding a fine, for, to the latter an offender is only “liable” 27 A. L. J. 400: 1929 All. 260: 114 I. C. 733: 30 Cr. L. J. 340.

—a second class Magistrate has no jurisdiction to try an offence under s. 420 I. P. C. 1930 Lab. 664: 12 Lab. L. J. 87.

S. 422. (Dishonestly or fraudulently preventing debt available for creditors).

—A agreed with B not to compromise suit with C and assigned the benefit of suit to B, as security for money due to him by A. Subsequently A compromised suit with C, held that A could not be convicted under s. 422 unless compromise with C was made dishonestly or fraudulently towards B. 22 W. R. Cr. 46.

—there may be breaches of contract but that conduct cannot necessarily be regarded as dishonest or fraudulent so as to render them liable to punishment. 28 C. 314: 5 C. W. N. 174.

S. 423. (Dishonest or fraudulent execution of deed of transfer containing false statement of consideration).

—although a *kabulyat* when accepted operates as a lease for some purposes, it is not a document which purports to transfer or subject to any charge, any property or any interest therein within the meaning of sec. 423 I. P. C. 46 C. 986: 29 C. L. J. 522.

—false statement of value is not a deed of transfer, the pre-emption being.

—the word “property transferred”
transfer that the whole of the plot of land belonged to the transferor is not a statement relating to the consideration for the transfer and is not an offence under this sec. 37 M. 47: 2 M. W. N. 413.

—the word “fraudulently” does not commit deprivation of property. It is not essential under this sec. that the person deceived or to be deceived should be the same as the person injured or intended to be injured. 45 C. 911: 66 J. C. 996: 23 Cr. L. J. 340.

S. 424. (Dishonest or fraudulent removal or concealment of property).

—s. 424 is intended to punish fraudulent debtors and accomplices and not persons who claim as heirs and deal with the property. 1924 M. W. N. 791.

—this sec. contemplates such a concealment or removal of property from the place where the property is deposited as can be considered fraudulent, whether the fraud is intended to be practised on creditors or partners. 21 W. R. Cr. 10.

—if the tenant in recovering the crops of a field which he holds under the *batai* system acts dishonestly, he is liable to be convicted under s. 424 I. P. C. 1 Pat. L. J. 353.

S. 424. (Dishonest or fraudulent removal or concealment of property)—*contd.*

—a Jt. Dr. removing the standing crops attached in execution of a decree is guilty under this sec and also under sec. 403 I. P. C. 22 M. 151: 8 M. L. J. 359.

—but where the accused who was not a judgment-debtor harvested and appropriated crops grown by him but under attachment in execution of a decree against his uncle and filed a case contending that the crops could not be legally attached and that he was entitled to them, held that the crops could not be considered to have been removed with the intention to cause wrongful loss to the decree-holder and there could be no conviction under sec. 424 I. P. C. 1929 Pat. 520: 1929 Cr. C. 280, 1931 Lab. 185 *Ref.*, 22 M. 151 and I. B. L. R. 515 *Dist.*

—but the act of taking away property by others with a view that it may not be attached would fall under s. 424 I. P. C. if it is done with a dishonest intention. 1930 M. W. N. 347: 1930 Mad. 670: 1930 Cr. C. 755: 126 I. C. 601: 31 Cr. L. J. 1086: 32 L. W. 23.

—the crucial question for determination under s. 424 I. P. C. is whether the alleged removal of property is dishonest or fraudulent and therefore if persons claiming title to property under attachment in execution of same, the question what d or not has to be deter deciding upon conviction *Dist.*

—where distraint is made under the Rent Recovery Act for arrears of rent and the property is dishonestly removed, before convicting the accused, it must be proved that the distraint was legal. 25 M. 729.

—if ryots holding land on *Varam* tenure remove crops for the purpose of protecting them from injury or damage owing to delay or refusal on the part of the Zeminder to perform his part in the harvesting or division, such a removal would not be dishonest within this sec. 26 M. 481: 13 M. L. J. 123. But in case of dishonest removal the ryot will be punished. 38 M. 793, 26 M. 481.

Ss. 425, 426. (Mischief, punishment for mischief) What constitutes mischief.

—to sustain a conviction under ss. 425 and 426 I. P. C. the presence of criminal intention is necessary. 1923 Lab. 92: 53 L. R. 1922.

—it is for the prosecution to prove that the accused caused damage with wrongful intent with the knowledge that he was not justified in doing it, and that the party under whose orders he was acting had no real title. 25 W. R. Cr. 65.

—the master is not criminally responsible for the wrongful act of his servant unless he can be shown to have expressly authorised it. 6 W. R. Cr. 60.

**Ss. 425, 426. (Mischief, punishment for mischief).
What constitutes mischief—contd.**

—there must be an intention to cause wrongful loss or damage to the public or to any person, if the property in question belongs to the accused himself no offence of mischief can be committed. 3 Pat. L. T. 335 : 66 I. C. 817 : 23 Cr. L. J. 321 : 1922 P. 197.

—the essence of the offence is that the property must be destroyed or have some changes caused in its situation which destroy or diminish its value or utility or affect it injuriously. 1 U. B. R. 1897-1901, 347.

—the terms of s. 425 are satisfied where there is a distinct finding as to accused's knowledge; the question of intention is material only as regards the sentence. Rat. Un. Cr. 690 : Cr. Rul. 13 of 1894.

—damage of a destructive nature is not contemplated by the sec., there should be an invasion of right and diminution of the value of property caused thereby, as contemplated by the accused. 12 C. 55.

—wrongful loss or damage to a person may be caused by the destruction of a property which a person has contracted to purchase. 12 C. 660.

—omission to give light to a house by failing to switch on the light does not constitute an offence under s. 426 as the refusal to do so is not an invasion of the property even though it may
49, 22 S. L. R. 393 :

on the land mortgaged to him in order to repay another part of the mortgaged premises does not commit mischief. 15 Cr. L. J. 290 : 23 Ind. C. 493.

—to make a breach in the wall of a canal is committing mischief. 34 A. 210 : 2 A. L. J. 162 : 13 Cr. L. J. 141 : 13 Ind. C. 829.

—cutting a channel through railway to let the water run off the accused's fields is committing mischief. 16 C. W. N. 263 : 13 Cr. L. J. 133 : 13 Ind. C. 826.

—s. 426 deals only with physical injury from a physical cause; throwing a shoe in the midst of persons who took their seats to partake of a caste feast among a certain class of Hindus, did not constitute mischief. 24 A. 555, A. W. N. 1901, 212.

—the word change in s. 426 means physical change in composition or form and a change in value is not sufficient to constitute mischief. 105 I. C. 672 : 28 Cr. L. J. 960 : 1928 Sind. 49 : 22 S. L. R. 393.

—where a man inflicts wounds on an animal with a spear whereby it is disabled for some days, his offence falls with s. 426 and not s. 429. 3 Bom. L. R. 503, 12 N. L. R. 188.

—floating timber through a bridge and striking the arch thereof with some of the logs, is mischief. 5 M. H. C. Ap 10.

—if a trespasser leaves his watch in the room of another the latter is not justified in smashing the watch or throwing it do
Bom. L. R. 86.

**ss 425, 426. (Mischief, punishment for mischief).
What constitutes mischief—contd.**

—to cut a crop that is grown to be cut is not to destroy it or affect it injuriously when it is not found that it was not in a fit state to be cut. 7 C. W. N. 713, 18 W. R. 10.

—sec. 425 I. P. C. contemplates that something should be done to the property contrary to its natural use and serviceableness. The grazing of cattle without permits in forest reserved for holders of permits does not amount to mischief because the graziers in so doing only put the grass to its normal use 52 M. 151; 114 I. C. 559; 30 Cr. L. J. 315; 1929 Mad. 5; 55 M. L. J. 767; 28 L. W. 759.

—where the accused acting solely in the interest of his master removed or damaged some bamboos belonging to his master's estate which was under the management of the Court of Wards, he did not commit mischief. 38 C. 180.

—where the servant of a landlord cut and removed a dead jack fruit tree standing on the homestead of a tenant, the act did not amount to an offence of mischief, 28 C. W. N. 736; 83 I. C. 898; 1924 Cal 805; 26 Cr. L. J. 194.

—innocently removing a barricade placed by the Municipality on a piece of land in front to the accused's house which impairs his ingress and egress to or from the said house, Rat. Un. Cr. 745; 10 Cr. Rul. 1895, cutting down crops planted by the complainant having no right in the land, 10 Bom L. R. 126, pulling down by a servant of a building which the civil court has declared as ought not to have been erected, 8 C 573, does not amount to mischief.

—where the accused removed an obstruction from the property which they believed to be their own, they cannot be said to have caused any wrongful loss to the complainant under s 425. 99 I. C. 414; 28 Cr. L. J. 158; 1927 Lah. 145.

—the infringement of exclusive right of fishery in public river is not mischief 15 C. 388.

—a person cutting neighbour's bund to save his own property from flood is not criminally liable. 41 C. 662.

—where the complainant worked a rice mill from which water flowed into a channel which in turn emptied into a main channel and the accused with the intent of stopping the continuation of

that the complainant had a natural right to discharge water therein. 1929 M. W. N. 711.

—where the accused had established his right of way in the Mamlatdar's court and obtained an injunction but sought to enforce the same s. 426 I does not permit
dominan 1 B. 587; 101 I. C.
604 192 484.

Ss. 425, 426. Property.

—"property" In sec. 425 means some tangible property capable of being forcibly destroyed, but does not include an easement. Rat Un. Cr. 287, 1930 Mad. 973 : 1930 M. W. N. 909 : 1930 Cr. C. 1189, therefore if the owner of the land over which other people have a right of passage throws earth upon that land so that the use of land by the others becomes disadvantageous or impossible, that does not amount to mischief for the reason that what is effected is not any property or its value but only a right of easement. 1930 Mad 973 : 1930 Cr. C. 1189 1930 M. W. N. 909.

—the cutting of paddy belonging to another which is unripe and not to be cut amounts to mischief, but if it is not proved that the paddy was not in a fit state to be cut no mischief is committed. 7 C. W. N. 713, 18 W. R. 1.

Cattle.

—negligently allowing one's cattle to stray into another man's garden does not amount to mischief. Rat. Un. Cr. 187, the prosecution is bound to show an intention on the part of the owner of the cattle to cause wrongful loss or damage. Rat. Un. Cr. 187, 199, 10 W. R. 29, 14 W. R. 31, 6 B. L. R. Ap. 3, 29 A. 565, 9 B. 173, 7 Bom. L. T. 126, Rat Un. Cr. 318, 357.

—driving a cattle on the road and then not controlling them in doing what they were almost certain to do unless prevented, might be regarded as causing of damage. Rat. Un. Cr. 318 : Cr. Rul 5 of 1887, Rat Un. Cr. 357.

—grazing cattle on waste land on which the Government has reserved the right to use the land for agricultural purposes is an offence under sec. 426. Rat. Un. Cr. 318 : Cr. Rul 5 of 1887, Rat Un. Cr. 357.

—something should be done to prevent the use of the land for agricultural purposes and serviceableness of the forest reserved for holders because the graziers in so use. 52 M. 151 : 114 1 C. W. L. J. 767 : 28 L. W. 759.

Negligence.

—neglect or carelessness is sufficient to constitute the offence of mischief 8 Bom. L. R. 851, 1 Weir 495.

—the negligence must be such as to have an active effect conducing to the result as a link in a chain of facts from which an intention to bring about the result may be inferred. 1 Weir 495.

One's own property.

—destroying property belonging to oneself with the intention of causing, or knowing that it is likely to cause wrongful loss or damage to any body else, constitutes mischief. 20 C. 660

—under s. 426 mischief must be done to the property belonging to another person but where the Civil Court has declared the right of a person to a property he commits no mischief by damaging the

Ss. 425, 426. One's own property—contd.

property. 93 I. C. 40 : 7 Pat L. T. 79 : 1926 Pat. 244 : 27 Cr. L. J. 392.

Bona fide.

—doing any injurious act under the *bona fide* assertion of right or in the exercise of *bona fide* claim, does not constitute mischief, but the court is to determine whether the claim is *bona fide* or not. Rat. Un. Cr. 465, 8 M. L. T. 246 : 11 Cr. L. J. 623 : 8 Ind. C. 318, 29 M. 57, 8 M. L. T. 385, 7 C. W. N. 859, 3 B. L. R. 17, 2 A. 101, 103, 6 P. R. 1908, 3 B. L. R. 17, Rat. Un. Cr. 387, 465, 21 W. R. 88, 1 Weir 488, 489, 490, 25 W. R. 46, 12 C. 660, 73 I. C. 805, 24 Cr. L. J. 693 : 1923 A. 514.

—acting in the *bona fide* claim of right is not an offence under this sec. 7 C. W. N. 859.

—the demolition of neighbour's wall under a *bona fide* claim of right is not an offence. 26 Bom. L. R. 978 : 1924 Bom. 486 : 84 I. C. 254 : 26 Cr. L. J. 254.

—cutting of trees in assertion of a *bona fide* claim is not an offence under s. 426 I. P. C. and the subject is one for the determination of a civil court. 86 I. C. 36 : 26 Cr. L. J. 660 : 1925 All. 291.

—where a tenant removed earth in the *bona fide* exercise of his right and the landlord complained, the dispute is one of civil nature. 73 I. C. 805 : 24 Cr. L. J. 693 : 1923 All. 544.

S. 427. (Mischief causing damage to the amount of fifty rupees.)

mischief is not a minor form of criminal breach of trust. The intentional causing of wrongful loss or damage is an essential element of the offence of mischief. Where the accused wrongfully permitted the licensee to cut one kind of tree instead of another from the forest but there was no allegation that the Government had sustained any loss owing to that act, conviction under s. 427 I. P. C. could not be supported. 1930 Rang. 158 : 8 Rang 13 : 1930 Cr. C. 590.

—where the accused grazed their cattle upon waste lands without payment of certain capitation fees to which the prosecutor was entitled, held there was no evidence that the accused caused mischief. 5 Mad. H. C. R. App. 29.

—where the cattle of the accused were on several occasions impounded he was rightly convicted under this sec. when his cattle damaged the crops of the complainant. 21 Bom. L. R. 247 : 5 Bom. Cr. C. 1.

—to constitute an offence under this section it is sufficient to prove that the property was in the possession of the complainant, his title need not be proved. 25 A. L. J. 1010 : 1927 All. 724 : 106 I. C. 680 : 29 Cr. L. J. 88.

—where a thief killed an animal he did not merit double conviction of theft and mischief. 84 I. C. 341 : 1925 Pat. 34 : 26 Cr. L. J. 277.

S. 427. (Mischief causing damage to the amount of fifty rupees)—*contd*

—where separate sentences under ss. 144, 448 and 427 I. P. C. were passed, sentences under ss. 448 and 427 were set aside, 3 W. R. Cr. 54.

—where the accused was charged under s. 452 I. P. C. and was convicted under s. 426 I. P. C. the conviction was not illegal, 81 I. C. 911 : 25 Cr. L. J. 1087.

—the compromise of a case by the complainant with the accused is binding against the master of the complainant. 22 A. L. J. 820 : 1924 A. 778 : 83 I. C. 658.

S. 429. (Mischief by killing or maiming cattle etc., of any value or any animal of the value of fifty rupees.)

—the words "bull" and "cow" in sec. 429 I. P. C. include the young of those animals. The section specifies the more valuable of the domestic animals without any regard to age, but in respect of other kinds of animals not so specified, the section could not apply unless the particular animal in question was shown to be of value of Rs. 50 or upwards. 22 C. 457.

—wounding animal with spear and disabling for some day is not maiming. 3 A. L. J. 503.

—cutting off half an ear of a mare is not maiming. 18 Bom. L. R. 289 : 3 Bom. Cr. C. 194

—cutting off the ears of a horse is maiming within s. 429. 35 M. 594 : 21 M. L. J. 843 2 M. W. N. 141.

—a bull dedicated to an idol and allowed to roam at large is not *fera bestia* and therefore *res nullius*. 11 M. 145.

S. 430 (Mischief by injury to works of irrigation or by wrongfully diverting water).

—where the accused was charged under s. 430 I. P. C. for having erected a bund across a channel flowing through his land with the result that the supply of water to the complainant's land was reduced, held that in the absence of a claim of easement or contract, for the supply of water by the complainant, the accused could not be convicted. 69 I. C. 95 : 23 Cr. L. J. 655 : 21 M. L. T. 424 : 44 M. L. J. 234 : 1923 Mad. 144.

—the offence under this section requires that the accused had the intention to cause or the knowledge that his act was likely to cause wrongful loss to the complainant. Mere proof of loss to the complainant is not sufficient. Where the accused filled up a channel flowing through his land which was the means of irrigation for the complainants' neighbouring land and which had been so used for 30 years to the knowledge of the accused, he was guilty of an offence under s. 430 I. P. C. 1925 M. W. N. 45 : 21 L. W. 641 : 1925 Mad. 577 : 88 I. C. 188 : 26 Cr. L. J. 1100

—an offence under s. 430 is committed where a diminution of water-supply is caused by filling up a supply channel or obstructing it by putting up a dam or by raising a dam already existing and

S. 430. (Mischief by injury to works of irrigation or by wrongfully diverting water)—*contd.*

thereby intentionally causing a change in the channel which diminishes its value or utility as a supply channel. 1925 M. 176.

—if a supply the intention to cause wrongful loss to a causes a diminutio 1923 M. W. N. 634 : ' with cause e act P. C.

—no person can commit mischief in respect of property which belongs exclusively to himself. 9 O & A. L. R. 10 : 72 I. C. 883 : 24 Cr. L. J. 467.

—where the accused cut a dam erected by the complainant not to take a supply of water but to save their own crops and it was not proved that the act of the accused caused diminution of the supply of water for agricultural purposes or that the accused knew that it was likely to cause such diminution in future, held that the accused could not be convicted of an offence under s. 430 I. P. C. 8 O W. N. 370.

—there cannot be a conviction under s. 430 where there is a right or a claim of *bona fide* right. 20 C. W. N. 128. Where the claim is not *bona fide* the accused will be punished. 10 B. 183.

—where the accused knew that by their act they were causing a diminution of the water supply to which others were entitled and they had not substantiated a right to take water themselves nor had shown that the others had no right and the facts are clear that the accused's claim was manifestly wrong, there is no *bona fide* claim and the accused is guilty. 2 Pat. L. R. 194 : 1924 Pat. 704.

—where the question as to whether a bund was put up or not by one of the parties was to be pre-eminently decided by the Civil Court, there should not be a conviction for an offence under s. 430. 98 I. C. 474 : 1927 All. 112 : 27 Cr. L. J. 1354.

—where the question was whether tenants had a right at all times of the year to the pure water in certain *khaals* belonging to the landlord and it appeared that the landlord had been exercising acts of ownership such as granting leases for the purposes of fishery and the agents of the landlord were prosecuted for an offence under s. 430 I. P. C. for letting the *bunds* of the *khaals* and for cutting *abud bund*, held that the case involved a question of relation rights of the parties, therefore a civil proceeding was the appropriate remedy and prosecution under s. 430 I. P. C. could not be sustained. 34 C. W. N. 86 : 1930 Cal. 318 : 50 C. L. J. 589.

—in order to constitute an offence under s. 430 I. P. C. the prosecution must prove that there has been unlawful and intentional interference on the part of the accused with the admitted or proved right of complainant. 32 C. L. J. 476.

—it is not part of the definition of the offence of causing a diminution of water supply for agricultural purposes that the act of the accused should be a mere wanton act of waste. It is sufficient that the act is done without any show of right. 1 M. 262 F. B.

S. 430. (Mischief by injury to works of irrigation or by wrongfully diverting water)—*contd.*

—where the accused took water that was running freely from a river through a *pyre* made and maintained by another for irrigation purposes and it was found that the accused was not acting under *bonafide* claim of right and their act caused a diminution of

—to convict under s. 430 it is necessary to show that the act of the accused in fact caused, or but for the prompt intervention, would have caused diminution in the ordinary supply of water for agricultural purposes. 41 A. 599: 17 A. L. J. 686.

—offence under s. 430 is particularly a grave form of the offence of committing mischief as defined in s. 425 I. P. C. No doubt a person who takes water from a tank causes loss but it should be shown whether he has caused a diminution of the supply of water for agricultural purposes. 1930 Cal 289: 1930 Cr. C. 377

—where petitioners had taken more water than they were entitled to, in violation of the order as to turns issued by the
 N. 349.
 previous years
 grant of it, held
 1940 M. W. N.

S. 431. (Mischief by injury to public road, bridge, river or channel).

—the erection of a *bund* across a *khāl*, a navigable channel, used by the public for purposes of conveyance and traffic, so as to render it impossible would be punishable under s. 431 6 B. L. R. App. 6. 14 W. R. Cr 63

S. 434. (Mischief by destroying or moving etc., a land-mark fixed by public authority).

—where a proceeding under s. 145 Cr P C was by mutual

s. 21 cl. (6) I. P. C., nor was he a public servant authorised to fix the pillars under s. 434 I. P. C. 30 C. 1084.

—removal of land-marks fixed by surveyor outside the authorised area is an offence under ss. 186 and 434 I. P. C. 31 M. L. J. 305: 1916 M. W. N. 183.

—a M. making an order under s. 145 has no authority to demarcate the land by boundary pillars and consequently the removal of such pillars is not punishable under s. 434 I. P. C. 27 A. 300.

SS. 435, 436. (Mischief by fire or explosive substance with intent to cause damage, punishment).

—it is absolutely necessary in order to convict an accused under s 436 to prove that the building which he destroyed came within one of the classes mentioned in the sec. and the words "ordinarily used" do not mean that other buildings are from time to time used for the same purpose. *They mean that that particular building is ordinarily used for the same purpose.* 35 Cr. L. J. 1190; 1924 All. 781.

—a crime which cannot be too heavily punished as it causes incalculable damage to innocent persons who can ill-afford to lose the title they possess; so the sentence of five years' rigorous imprisonment was not interfered with. 1931 Oudh 116; 131 I. C. 436; 8 O. W. N. 101.

—but the punishment ought not to be disproportionate to the offence proved. Where accused in the course of a riot set fire to a *chaupal*, a sentence of ten years' imprisonment under s. 436 is disproportionate and excessive. 82 I. C. 54; 25 Cr. L. J. 1090; 1924 All. 781.

—where the accused was convicted for the same act under s. 436 and sentenced to 7 years' rigorous imprisonment and also under s. 435 and sentenced to 3 years' rigorous imprisonment conviction under s 435 I. P. C. was set aside. 11 Bom. H. C. R. 14.

—conviction on evidence of previous fire is illegal. 20 C. W. N. 1257; 35 I. C. 981; 17 Cr. L. J. 421.

S. 441, 447. (Criminal trespass, punishment for criminal trespass).

—the unusually vague and elastic language used in sec. 441, "enters or causes to be entered" might lead to the conclusion that it was not necessary that the entry should be limited in scope. It was limited is scarcely possible, but it is plain that its scope must be confined within those bounds that common sense and sound reason dictate. 2 A. 465, 14 W. R. 25.

—there must be some unauthorised entry into or upon property, that is to say, either directly against the will of the person in possession, or constructively against his will, in the sense that he who enters has an unlawful intention, which, were it known to such person, would make him object, forbid or prevent the entry, that in ignorance of such intention he sanctions and permits, *above case*

—in order to constitute the offence of criminal trespass, it must be proved that some criminal intent was present in the mind of the accused and it does not follow that, because an act is unlawful, and is one that the civil law will restrain, or for which it will compensate the injured party in damages, it is necessarily criminal. 29 P. R. 1882, 13 P. R. 1905, 12 P. R. 1906 F. B.

—the accused must commit the trespass in person, merely sending servant is not an entry by the master, 3 L. B. R. 278, but getting people to build on the land of another in spite of protest

Ss. 441, 447. (Criminal trespass, punishment for criminal trespasses—*contd*)

without personally setting foot thereon is criminal trespass. 15 A. L. J. 793.

—property in the sec means corporeal property. 2 C. 354, 1 A 527.

—s. 447 requires it to be affirmatively and positively proved that the complainant was in possession of the land in dispute with respect to which criminal trespass is said to have been committed. 3 Pat L T 347, 67 I. C. 618; 13 Cr. L. J. 440; 1922 P. 296.

—"possession" in the sec means actual possession of any person other than the trespasser, 11 W. R. 11, 7 W. R. 28, 17 A. L. J. 927, 1 Weir 518, it may be the possession of joint owner. 8 A. L. J. 927, 10 Bom L R. 285.

—where formal possession was delivered through court to the complainant and the accused remained in possession thereof, he was not guilty of criminal trespass. 88 I. C. 357; 1925 All. 502; 26 Cr. L. J 1125

—where a decree for ejectment of a tenant under the Agra Tenancy Act was illegally executed and the tenant re-entered upon the land, the tenant must be considered to have been legally in possession and cannot be convicted of criminal trespass. 27 A. L. J 92; 29 Cr L. J 1096; 112 I. C. 630.

—intimidation, insult or annoyance can in most cases arise only when the premises are in the actual possession of some body. They are at all events results which more naturally follow when premises are occupied than when vacant. Mere constructive possession is not sufficient to sustain a conviction. 47 A. 855; 26 Cr L. J 1273; 88 I. C. 1049; 1925 All. 510; 23 A. L. J. 679; L. R. 6. A. 132 Cr., but see below.

—the sec. does not require the land to be in the actual possession of the complainant. If given under the decree of a court of competent jurisdiction, the party to the suit who is in possession at the time of the trespass is the party to the suit who is in possession. 30 Bom. L. R. 631;

—a criminal act may injure either the person in actual possession or the person in constructive possession or both. 33 C. L. J. 118.

—constructive possession is included in the word "possession" so that the trespasser cannot be heard to say he could not have caused annoyance merely because the party in possession of the trespassed premises was absent at the time of trespass. 1931 M. W. N. 328, 2 A. 46; Diss from, 60 M. L. J. 336; 1931 M. W. N. 182; 1931 Mad 231 (*below*) approved.

—In order to find the accused with an intention to annoy it is not necessary that the party in possession of the property should be actually present on the property at the time of the trespass. 1931 M. W. N. 182; 1931 Mad. 231; 60 M. L. J 336; 1931 Cr. C. 327; 131 I. C. 455; 33 L. W. 291, (47 A 855, *Ref.* 1 Weir-578 *Dist.*)

Ss. 441, 447. (Criminal trespass, punishment for criminal trespass)—*contd.*

—in case of joint possession unless there is ouster there is no criminal trespass, 3 M. 178, but when one member of joint family enters into the room ordinarily occupied by another member, 15 W. R. 6, or when joint owner takes the law into his own hands to recover possession, 10 Bom. L. R. 285, he commits criminal trespass.

—the offence of criminal trespass can only be committed against a person who is in actual physical possession. If a person in joint possession wishes to have actual possession his remedy is in bringing a suit for actual partition; he cannot forcibly take possession alleging criminal trespass on the part of the person who is in possession by permission of one of the co-owners. 5 O. W. N. 598; 29 Cr. L. J. 745; 110 I. C. 681; 1929 Cr. C. 345; 1929 Gudh. 366.

—if the entry is not to commit an offence or to intimidate or annoy any person it is not criminal trespass. 4 M. 243, 5 M. 332, 4 O. W. N. 47, 1 Weir 521, 26 A. 194, 27 A. 298.

—if the entry is to commit an offence criminal trespass is committed. 2 M. W. N. 71, 21 M. L. J. 781, 12 M. L. T. 118.

—trespass is an offence only if it is committed with one of the intents specified in the sec. 41 M. 156 F. B., 35 M. 186 overruled, 82 I. C. 149. 25 Cr. L. J. 1221, entry on another's land in bona fide exercise of claim of right does not constitute the offence, 5 S. L. R. 135. 13 Cr. L. J. 27, 1912 M. W. N. 395; 13 Cr. L. J. 477; 15 Ind. C. 317, 1925 Nag. 36.

—when the entry upon land is in the exercise of bona fide claim of right or in good faith, no trespass is committed. 18 O. W. N. 1245, 7 C. L. J. 238, 43 C. 1143, 16 A. L. J. 501, 81 I. C. 838; 25 Cr. L. J. 1064, 1925 Nag. 36.

—where there was no criminal intention and the accused finding that the vendee to whom they sold their land, did not pay the consideration in spite of his undertaking to pay, entered on the land bona fide they could not be convicted of criminal trespass. 81 I. C. 888; 25 Cr. L. J. 1064.

—where a person unlawfully enters upon property and continues to remain unlawfully upon the same by resisting the claim of the true owner to re-enter, he commits a fresh offence and can be convicted again although he was once convicted for the unlawful entry. 6 Pat. 794; 29 Cr. L. J. 99; 106 I. C. 691; 1923 Pat. 124.

—when a person enters on another's property to cut down trees thereon he is guilty under this sec. 1 W. R. 46.

—criminal trespass depends on the intention of the offender and not upon the nature of the act. If a man's intention is to save his family or property from imminent destruction his cutting a portion of an embankment belonging to his neighbour would not constitute the offence. 41 C. 661.

Ss. 441, 447. (Criminal trespass, punishment for criminal trespass)—contd.

—the sec. is so worded as to show that the act must be done with intent and does not as other secs. do, embrace the case of an act done with knowledge or likelihood of a given consequence. 19 M. 240, 6 M. L. T 262.

—it is the intention of the accused that is the deciding factor to constitute an offence of trespass. Where the accused first took settlement of certain khas mahal lands for grazing cattle but at the end of the lease remained on the land and proceeded to cultivate it, held that the accused did not commit an offence, their intention being to cultivate the land and not to annoy the Government. 1931 Cal. 264: 130 I. C. 500: 1931 Cr. C. 296.

—to support a conviction under s. 447 I. P. C. there must be proof of an intention to commit an offence or to intimidate or annoy. Where after redeeming a mortgage the mortgagors sought to recover possession from the cultivating tenants and lodged a complaint for forcible possession but there was no proof of insult or intention to annoy, the accused could not be convicted of criminal trespass, the proper remedy of the complainant lying in Civil Court. 50 A. 637: 26 A. L. J. 421: 1928 All. 671: 29 Cr. L. J. 570: 109 I. C. 506.

—intention to cause intimidation, insult or annoyance must be found. The mere fact that the accused must have known that his act would as one of its inevitable incidents cause annoyance will not suffice to sustain a conviction. 47 A. 855: 26 Cr. L. J. 1273 88 I. C. 1049. 1925 All. 540: 23 A. L. J. 679: L. R. 6 A. 132

—intention cannot be inferred from the actual or probable results. To constitute the offence under s. 441 I. P. C. it is necessary to show the actual intention to insult or annoy before the acts were complete. 1929 Pat. 111: 116 I. C. 783: 30 Cr. L. J. 684. (41 M. 156: 19 M. 240, 1925 All. 540) *Ref. on.*

—where a person claiming a title to property, whether his title be good or bad, enters without any legal justification upon property in the established possession of another, he must be inferred to have had an intention to annoy the person in possession, even though he had no primary desire to annoy and his only object was to obtain possession for himself. 1933 Lah. 666. 11 Lah. 238: 31 Pooj. L. R. 499.

—there may be no wish on the part of the accused to annoy, but if annoyance is the natural consequence of the act known to the accused there is intent to annoy, if the results are foreseen by the accused it cannot be said to be caused unintentionally. 4 Bom. L. R. 280: 25 B. 558, 41 M. 156 F. B. Diss.

—when a person enters another's house after having taken all precautions to avoid discovery he cannot be said to have entered the house to cause annoyance to the persons in possession. 96 I. C. 871: 27 Pooj. L. R. 385: 1926 Lah. 660: 27 Cr. L. J. 1015, 12 P. R. 190 F. B. *expl.*, 17 P. R. 1908 *Diss. from.*

Ss. 441, 447 (Criminal trespass, punishment for criminal trespass).—contd.

—the ~~act~~ ^{act} ingredient of sec. 447 I. P. C. is that the trespass ~~with intent~~ ^{with intent} of annoyance or insulting some one or act done with the intention of committing an offence. 3 Pat. L. T. 19 M. 240, 6 L. J. 95: 65 I. C. 446, 50 A. 637: 26 A. L. J. 421, 29 Cr. 928 A. 671: 109 I. C. 506.

—if possession is permissive at its inception, subsequent to const. leave it does not amount to criminal trespass. 26 Punj. took sett.

at the entering upon a vacant piece of land with the permission cultiva. person who asserts his title thereto as against a rival claimant their sitting up a water pandal do not amount to criminal trespass. Gove. L. J. 437: 83 I. C. 1003: 1924 M. W. N. 546

proof—it is illegal to maintain possession by force in spite of the ano. thereof in execution to the other party. 83 I. C. 719: 1924, to ri. 1962.

the instruction of his master trespasses on the property of apply. 1 Bur. L. J. 276: 1923

Civ. 155.

570—where the complainant is not in possession of the party there cannot be criminal trespass. 33 M. L. T. 184: 74 C. 856: 1924 Mad. 40: 24 Cr. L. J. 824, 74 I. C. 534: 24 Cr. 790.

his—landlord entering upon the land of the tenant until the wi. property is determined commits criminal trespass. 81 I. C. 187: 12 Cr. L. J. 699.

re. —when tenant holds over, the landlord cannot re-enter without determining the tenancy in accordance with law. 2 Bur. L. J. 37: to Rang 245.

(4) —a landlord entering upon the property in the possession of tenant is guilty of criminal trespass. 69 I. C. 379: 23 Cr. 699.

titl. pro Ss. 442, 448. (House trespass, punishment for house trespass).

eve —the building must be the property of another person wa. 534.

31 —a yard, originally walled on four sides, but having in one which had fallen out of repair, a gap stopped with a thorn, was held to be a "building." 6 N. W. P. 307.

the —a court-yard consisting of a walled enclosure with four chambers opening into it, and outer door leading into a side-street, is a building. 35 P. R. 1879

—an outer verandah of a Burmese dwelling house is a building. 9 B. L. T. 204.

the —a courtyard bounded by walls on all the sides without a door opening out anywhere is not a building for the purpose of sec. 442. 190 I. C. 809: 9 Lah. 623: 25 Cr. L. J. 457.

Ss. 442, 448. (House trespass, punishment for house trespass)—*confd.*

—but a courtyard attached to the living rooms walled in on all sides and provided by a door leading to the street which is secured falls within the purview of sec. 442 I. P. C., 29 Cr. L. J. 875: 111 I. C. 459: 1929 Sind. 17.

—a compound, Rat. Un. Cr. 481, an uninhabited court-yard, 2 A. W. N. 224, unwallcd compound, 4 L. B. R. 24: 6 Cr. L. J. 134, roof of a house, 15 P. R. 1907: 44 P. W. R. 1907: 6 Cr. L. J. 441: 56 P. L. R. 1908, 9 P. R. 1887, 66 P. L. R. 1914: 15 Cr. L. J. 265, is not a building.

—open courtyard in front of a house with thorny bushes placed round it more to indicate its extent rather than to prevent entry is not a "building" and consequently stepping into it is not house trespass 1928 All 607: 29 Cr. L. J. 766: 26 A. L. J. 855: 110 I. C. 798: 1928 A. I. Cr. R. 387.

—the determining factor to find out whether a place is a human dwelling or not within the meaning of the sec. is not the existence of the shutters or the fact that the door was shut or open at the time of entry by the accused but the nature of the structure as a whole and the purpose for which it was intended to be used and was being used. 1930 Lab. 414: 31 Cr. L. J. 263. 1930 Cr. C. 474: 121 I. C. 427.

—a *Wekva* used for the custody of property is a building within the meaning of sec. 442 I. P. C., 6 L. L. J. 385: 1925 Lab. 117, 35 P. R. 1879 *fol.*

—under this sec. a boat is for certain purposes classed with houses. 10 W. R. Cr. 53.

—where certain persons came armed with swords and with a large retinue and torches and entered the complainant's house by night and carried away a large amount of property they were convicted under s. 448.

—where during the absence of the complainant, the accused took possession of the house in her occupation and established an alleged adopted son of the complainant's father, he could not be convicted of house-trespass as it was not a criminal but a civil trespass. 12 C. W. N. 269: 7 C. L. J. 175

... .. Jt. Dr. in execu-
15 A. L. J. 808.
... .. of the complai-
... .. civil court decree
which they had obtained against one of the inmates of the house.
they were not liable to be convicted for criminal trespass. 1930 Cal.
720: 34 C. W. N. 583: 1930 Cr. C. 1120: 127 I. C. 551: 31 Cr. L. J.
1223.

... .. and made a hole in a wall of a house and
on the blocked, it did not constitute
the attempt to commit such
off : 4 Leh. 399.

Ss. 442, 448, (House-trespass, punishment for house-trespass)—*contd.*

—entry on a verandah with an attempt to push open a door, 8 B. L. T. 17, removal of a trap door to commit trespass, Rat. Un

Office and complaining was to be obtained -*esp.* 22 C. 123. another secretly with the intention to carry on intrigue with a widow is not guilty of house-trespass. 4 C. L. J. 169.

—where the accused trespassed into the shop for the purpose of assaulting the complainant he was to be punished for an offence under s. 442 and not under s. 452 I. P. C. 38 C. L. J. 161.

—a conviction under sec 448 can be had although the complainant is not the person in possession of the property. 33 C. L. J. 118.

—where the accused passed through complainant's house without the consent and notwithstanding his protest in order to execute a warrant in another's house, he was guilty of house-trespass. 26 B. 558 : 4 Bom. L. R. 280.

—a police officer is not justified by the mere fact that a person is of a suspicious character, to enter his house at midnight and see whether he is in the house. The act of the police officer in so entering the house is a house-trespass for which the police officer will be punishable under this sec 13 M. L. J. 285 : 27 M 52.

1925 Nag. 50.

—intention is one of the most important ingredients of this section and in order to determine the intention it is necessary to consider the circumstance under which the act was done as also the *bona fide* nature and otherwise of the claim of the accused. 1928 Cal. 263.

—to convict under s. 448 there must be an express finding that the accused intended to cause annoyance 101 I. C. 457 : 28 Cr. L. J. 425

—in proceeding under s. 145 the M must confirm the party who is in actual possession and cannot oust him by appointing a receiver Persons who continue to remain in possession after the appointment of such receiver cannot be convicted under s. 448 I. P. C. 3 Pat. L. J. 147.

—an entry into a house in assertion of a *bona fide* claim of right does not constitute criminal trespass, which requires an intention to commit an offence or to intimidate, insult or annoy any person in possession 81 I. C. 823 : 25 Cr. L. J. 1047 1925 Pat. 167. In case of *bona fide* action the sentences should not be heavy. 2 Pat. L. R. 20

Ss. 442, 448, (Housebreaking by night)—*contd.*

(trespass)—*contd.* It was not dacoity but house-breaking by entry on a ver. gap No)

8 B. L. T. 17, removal of a shop was found broken open, held that it could have been for house-breaking by night and 4 W. R. Cr. 19

o a house at night by scaling a by night under a 446 I. P. C., 2

—a person

the intention to (Punishment for criminal trespass.) See ss. 441, 447. house-trespass, (Punishment for house trespass.) See ss. 442, 448.

—where (house trespass in order to commit offence of assaulting, with imprisonment.) under s. 442 a

—a cor the purpose of this section any "offence" punishable under plainant is n Code is an "offence" It is only an offence which is 118. under a special or local law that must be punishable

—wherement of six months or more before it can be con- without the "offence" within the meaning of this sec 131 I C. 381.

whether ing the —a charge under s. 451 I. P. C must charge the accused with punishing house-trespass with intent to commit some specific 16 W. R. Cr. 53 (63) s. 451 I P C. the prospective to show that there has been art of the husband 19 A. 74,

192? —where the husband was absent in the pursuit of his occupa- tion it may safely be presumed that such husband neither consented sr to nor connived at any adultery or immorality on the part of the wife. 60 I. C. 666 : 22 Cr. L. J. 266, 89 I. C. 319 : 26 Cr L. J. 1343 : 1925 Lah. 635.

—where during the absence of the husband the accused entered his house with his wife's consent in order to commit adultery with her, the accused was guilty under this section and the consent of the wife did not save the accused. 59 I C. 550 : 22 Cr. L. J. 118 : (1920) P. W. R. 8 of 1921 (Cr.)

—where the object of house-breaking was to have sexual intercourse with the complainant's wife, conviction of the prisoner was legal. 8 M. H. C. R. (App). 6.

—the omission of the husband to prosecute the accused for adultery does not absolve the latter from liability under this sec. 1894 Rat. Cr. C. 689 contra 5 M. H. O R (App) 5, 1 Weir 531.

—the prosecution must first establish simple house trespass, then the object of committing a further offence. 17 A. L. J. 800 : 41 A. 587 : 50 I. C. 827 : 20 Cr. L. J. 347.

S. 443. (Lurking house trespass).

—entry upon the roof of a building was walled in on trespass or house-breaking though it may be a street which is 20 A. W. N. 151, 9 P. R. of 1886. Cr. L. J. 875.

—to constitute the offence under this section some active means to conceal his presence. 21 P. Cr. L. J. 134.

S. 444. (Lurking house trespass by night)

—when the door of a shop was found broken the conviction should be for house-breaking by night. 265, is lurking house trespass by night. 4 W. R. Cr. 19.

S. 445. (House breaking).

—effecting an entrance into a house at night wall constitutes house breaking by night. 2 W. R. Cr. J. 855.

—when a hole is made by the burglars in the wall but their way is blocked by the presence of beams on the of the wall, the offence committed is one of attempt house-breaking and not actual house-breaking and 111 does not apply. 4 Lab. 399.

—the entry of the accused into a house by merely shutters of the door does not come under any of the 6 clauses 445 I. P. C. defining house-breaking. A door cannot be fastened when its shutters were merely closed. The term implies something more, such as chaining the shutters or tying with a rope or bolting them or locking the door. 66 I. C. Cr. L. J. 278: 1922 Nag. 27.

—house-breaking cannot be committed without entering the house. Stepping on the platform in front of the door opening the door does not amount to house-breaking; it may be an attempt to commit house-breaking. 106 I. C. 340: 23 Cr. L. 29 Punj. L. R. 54 9 A. I. Cr. R. 323.

—where the complainant deposed that he heard the ki door fall down and saw people entering and identified some of but no specific names were in his report to the headman one saw the accused lift the doors off its hinges the charge should be under s. 445 I. P. C. 1931 M. W. N. 129.

—where only one of several persons charged with house-breaking was shown to have threatened the occupant with death to induce him to deliver the keys of the iron safe and it was shown that this was in furtherance of a common object of a conviction of all of them for house-breaking and extortion not sustainable. 1931 M. W. N. 129.

—as the offence of outraging the modesty of a woman is punishable with whipping, house-breaking to commit that offence cannot also be punished with whipping. 89 I. C. 146: 1925 All. 26 Cr. L. J. 1232: 23 A. L. J. 834.

S. 446. (House-breaking by night).

—where five armed men were discovered house-breaking at night and when discovered committed violence in order to escape.

456. (Punishment for lurking house-travass or house-breaking by night)—*contd.*

—to enter into a house at night by scaling a wall amounts house-breaking by night. 2 W. R. 65.

—entry into a house to commit adultery in the middle of night offence under this sec. 44 C. 358, 22 C. 391, 994, 29 A. 46, 395, but such entry with the consent of the inmate is not offence. 50 P. L. R. 1919, 12 P. R. 1898.

—the court must find out the intention of the accused. 14 P. Cr., 42 P. R. 1881 Cr.

—an accused may be convicted under this sec. though the is charged with the commission of an offence under s. 457, V. N. 1075, but not without amendment of the original 16 C. W. N. 696; 13 Cr. L. J. 224; 14 Ind. C. 320.

—the mere non-production of the owner or person in actual possession of house, does not vitiate conviction under s. 456, 1924 Ind. L. R. 5 A. 127, 12 A. L. J. 151 *Dist.*

—but it would be different where the person in possession had possession whatever to the alleged trespass. *above case.*

457. (Lurking house-travass or house-breaking by night in order to commit offence punishable with imprisonment.)

—an entry into the house by merely pushing in the shutters does not come under any of the six clauses of sec. 445

—I. C. story corroborated by an inmate of the house that he entered house to negotiate a marriage. 26 Cr. L. J. 716, 86

—entered though it cannot be laid down as a general rule that in all

—intercourse of the original charge unless the court is satisfied that was legit been in any way prejudiced in his defence by the amendment the charge. 71 I. C. 247 24 Cr. L. J. 1193, adultery C. W. N. 696.

—1894 R. there were some circumstantial evidence but no offence convicting the accused with the theft, held that then the had not established the complicity of the accused 41 A. 55 offence of house-breaking and theft. 1929 Mad 846; 57

S. 457. (Lurking house trespass or house breaking by night in order to commit offence punishable with imprisonment)—*contd.*

M. L. J. 548 : 1929 M. W. N. 785; 1929 Cr. C. 614, (17 A. 576, 16 C. W. N. 238, 39 I. C. 330, 1923 Lah. 335) fol.

—the presumption of guilt arising under s. 114 Evi. Act from the possession of stolen property does not extend to the offence of house-breaking under s. 457 I. P. C. 9 *Mye. L. J. 25.*

—a conviction for lurking house trespass by night under s. 457 I. P. C. cannot be sustained unless the charge contains a specification of the intention for such trespass. 22 C. 391.

—where a person who was an inmate of the house broke open the chest of his uncle and took out property from it, he could not be properly convicted under s. 457. 6 N. W. P. 301.

—where on a charge under s. 457 I. P. C. it was proved that the accused did enter complainant's house in order to have sexual intercourse with a woman whom he knew was the wife of the complainant and further he did so without the husband's consent and the accused was convicted, the conviction was proper. 23 A. 81.

—where the accused under a fraudulent claim of title to a house broke into it during the absence of the owner, assaulted his servant and took forcible possession of the house he was rightly convicted under s. 457. 35 M. 168.

—where a police-man whose duty it was to protect the lives and property of the subject of the Crown was convicted of a serious offence of burglary, a sentence of five years rigorous imprisonment was held not excessive. 1930 Cr. C. 811 : 1930 Lab 667.

—where the accused was a young man of only 21 years of age and was severely beaten by the complainant, the H. C. reduced the sentence. 26 *Proj. L. R. 777.*

... I. P. C. is really in some cases s. 395. There is no reason why es of these two offences. 57 124 I. C. 66 : A I. R. 1930 Cal.

S. 458. (Lurking house trespass or house-breaking by night after preparation for hurt, assault or wrongful restraint.)

—s. 458 only applies to the house breaker who actually has himself made preparation for causing hurt to any person or for assaulting any person and so on and not to his companions as well who themselves have not made such preparations. 77 I. C. 446 : 25 Cr. L. J. 398 : 4 Lah. 399 : 1923 Lah. 509.

S. 459. (Grievous hurt caused whilst committing lurking house-trespass or house-breaking.)

—ss. 459 and 460 I. P. C. provide for a compound offence, the governing incident of which is that either a "lurking house-trespass" or "house-breaking" must have been completed in order to make a person who accompanies that offence, either by causing

S. 459. (Grievous hurt caused whilst committing lurking house-trespass or house-breaking)—*confd.*

grievous hurt or attempt to cause death or grievous hurt, responsible under those secs 8 A 649.

—the grievous hurt must be caused or the attempt to cause death or grievous hurt must be made during the time that the house-breaking is being committed and not after that offence is completed and the offender has left the premises. 8 A. 649.

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—where four men were convicted under s. 459 I. P. C. and sentenced to a long term of imprisonment and fine and it appeared that the accused belonged to an humble walk of life, held that under those circumstances it was not necessary to impose fines in addition to substantial sentences of imprisonment. 11 Lah. L. J. 230; 30 Punj L. R. 125; 117 I. C. 802; 30 Cr. L. J. 838.

S. 460. All persons jointly concerned in lurking house-trespass or house-breaking by night punishable where death or grievous hurt caused by one of them.

—where after house trespass by night the accused and certain others were retreating and while running away the accused was caught hold of by a neighbour on whom some of the companions of the accused inflicted wounds of which he died, held that the offence was committed at the time when the house-breaking was committed at the time which forms an essential part of the offence and cannot be extended so as to include any prior or subsequent time. 2 Lah. 342; 65 I. C. 628; 23 Cr. L. J. 164.

—s. 460 I. P. C. is intended to provide for punishment on persons who are jointly concerned in the committing of the house-trespass or house-breaking altogether irrespective whether they were the persons who caused or attempted to cause grievous hurt. 8 A. L. J. 574

Ss. 463, 464, 465. (Forgery, making false document, punishment for forgery).

—s. 463 contemplates two classes of intents and it is clear (specially if regard to be had to the context) that it is not an essential quality of the fraud mentioned in the sec. that it should result in or aim at the deprivation of property. It cannot be

Ss. 463, 464, 465. (Forgery, making false document, punishment for forgery)—*contd.*

—the expression "intent to defraud" in sec. 463 implies conduct coupled with intention to deceive and thereby to injure, in other words "defraud" involves two conceptions namely, deceit and injury to the person deceived, that is infringement of some of his legal right but not necessarily deprivation of property. 42 C. L. J. 215 : 90 I. C. 534 : 26 Cr. L. J. 1574, 14 C. W. N. 1076 *Ref.*

—to constitute an offence under s. 464 I. P. C. the intention must be proved to be to cause it to be believed that such document was made or signed or executed by, or by the authority of a person by whom or by whose authority it was not made or signed. 40 C. L. J. 256 1925 Cal. 14.

document must have the character or tendency described in s. 463 I. P. C. 3 Lah. 373 : 1923 Lah. 11.

—an entry in his books by the creditor making an assertion of a right to interest not purporting to have been agreed to by the debtor does not constitute an offence under ss. 464 and 465 I. P. C. 3 Lah. 373.

—an entry of excess payment in a muster-roll would not make the muster-roll a forged document. 27 A. L. J. 592 : 1929 All. 396 : 115 I. C. 135 : 30 Cr. L. J. 408.

—the "making of a part of a document" must be the making of a part of a false document and in the making of a part of a document not only the intention or purpose must be proved but the fact that the document was false must be proved. 27 A. L. J. 592 : 1929 All. 396 : 115 I. C. 135 : 30 Cr. L. J. 408.

—mere ante-dating of a document is not forgery if there is no dishonesty or fraud on the part of the alleged forger. 98 I. C. 111 : 8 Pat. L. T. 104 : 1927 Pat. 87 : 27 Cr. L. J. 1263, 5 Pat. 573 : 98 I. C. 252 : 27 Cr. L. J. 1308 : 1926 Pat. 535.

—forging false signatures and thumb impressions on signature slips in a Municipal Election will be an offence under s. 463 I. P. C. and is not a mere electoral offence under Ch. IX A. I. P. C. 22 A. L. J. 497 : 83 I. C. 654.

—the word fraudulently as used in s. 364 must not be taken to mean with intent to defraud. 22 C. 313 : 3 U. B. R. P. C. 29.

—to constitute the offence of forgery it is not necessary that the false document should be made with the intention of committing a fraud or dishonesty in future. If the intention with which a false document is made be to conceal a fraudulent act which has been previously committed the intention cannot be other than to commit fraud, and the offence of forgery as defined in sec. 463 is committed : *above case.*

—to constitute forgery intent to defraud is essential. 1926 Cal. 224

Ss. 463, 464, 465. (Forgery, making false document, punishment for forgery)—*contd.*

—in order to constitute, in point of law, an intent to defraud, there must be a possibility of some person being defrauded by the forgery or there must be a possibility of some person being not only deceived but injured by the forgery; the mere fact that the person forged signature of another person is a sign in order to enable him to be barred by

1930 Pat.
11 Bom. L.

R. 3) *Ref.*

—in order to constitute an offence of forgery it is not necessary that the wrongful gain or loss should be actually caused. It is sufficient if there is the intention of causing it. Where certain co-sharers applied for entry in the revenue papers so as to include certain additional names therein and it appeared that the signatures of certain persons were put as though it was authorised, the accused
471 I. P. O. though not under s.
C. 492; I. R. 1931 All. 284; 32 Cr.

—where a document is made for the purpose of being used to deceive a court of Justice it is made with the intention of being used for that purpose 14 C. 513.

—a person who is not the writer cannot be charged with the substantial offence of forgery, if he has caused such a false document to be made he will be guilty of abetment 17 C. W. N. 354, 10 W. R. 7, 5 W. R. 70.

—a writing which is not legally admissible with respect to the matter contained therein may be a document if the parties believed and intended it to be evidence of that matter. 10 W. R. 61.

—legal claim or title to property does not save the accused from punishment for forgery. 9 C. 53.

—if in order to support a true claim or a genuine title a false document is manufactured, it is a forgery. It need not be intended to support a false claim or a false title 96 I. C. 850;

and registration of a document
the accused placed his name on
the document as an attesting witness, he committed no offence
under s. 471 14 C. W. N. 1074; 12 C. L. J. 227.

—where the accused fabricated
for a post and used them and
Master to stop the despatch com-
mitted the offence under s.
documents but with regard to it
said that he falsely made it either dishonestly or fraudulently 13 C.
349, 22 B. 768, *contra*, 12 P. R. 1895.

—a false certificate of not very great importance is not a forgery as it is not made on affidavit 27 A. L. J. 592; 1929 All. 396; 30 Cr. L. J. 408; 115 I. C. 135; 1929 Cr. C. 6

Ss. 463, 464, 465. (Forgery, making false document, punishment for forgery)—*contd.*

—the word "claim" applies to the claim of anything and not only to the claim of property. 15 A. 210, 25 C. 512, 10 Lab. 545: 30 Punj. L. R. 724: 118 I. C. 385: 30 Cr. L. J. 900: 1929 Lab. 152, 22 B. 768, 28 M. 90 F. B.

—*when a document is executed by some one*

—*but part of a document in order to come within the definition of false document must be dishonestly or fraudulently made, signed sealed or executed by the person who is charged. Mere surplusage would not invalidate a document.* 17 C. W. N. 354: 14 Cr. L. J. 129.

—where there is an intention to deceive and by means of the deceit to obtain an advantage, there is fraud and if a document is fabricated with such intent, it is forgery. 21 A. 113.

—an intention to an intention to defraud.

—absence of in the document was signed by under a 464 I. P. C. 53 C Cal. 14: 26 Cr. L. J. 401.

—a copy of a false document L. J. 534: 6 M. L. T. 428, but where the accused knew to be forged instance he produced a copy of it.

—the making of a copy of a forged document does not amount to forgery if the accused was not authorised to make the copy. 4 P. L. J. 16.

—where the interpolations in Police diary were struck off before copy was made there was no offence. Rat. Un. Cr. 12.

—where the accused, a debtor, instead of making an entry of liability, makes an entry of payment he does not commit forgery but an attempt to commit cheat. 12 M. 114

—the signing of a Vakalatnama in the name of co-decedent holders without their authority to do so and delivering it to the vakil to file it, is forgery. 6 W. R. 78.

—false personation at an examination and signing answer papers in the name of the true person constitutes forgery and cheating by personation. 12 M. 151.

—signing a certificate of purchase of a gun in the name of a false man and giving a false address and thereby deceiving the gunsmith and Government constitutes forgery. 43 C. 421.

—where a Mukhtear altered the schedule of a plaint openly and it was not established that it was made fraudulently or disho-

neal a
as the
411. 42
A. 633.

Ss. 463, 464, 465. (Forgery, making false document, punishment for forgery)—contd.

—the alteration of certain accounts with a view to show that a certain sum of money which had been misappropriated was received on a certain date and to remove the evidence of such misappropriation is not punishable under s. 465, 471 or 477 A, there being no intention to commit fraud. 36 C. 955, 22 C. 313, 35 C. 450, *dist.* 15 Rom. L. R. 708.

—as to whether or not there is an intent to defraud in any particular case depends on the actual circumstances of that case, *abote case*.

—account books not kept in the regular course of business cannot be necessarily held to be forged documents. 98 I. C. 56; 27 Cr. L. J. 1240 1927 Pat. 47.

—where the accused took an active part in the preparation of a document but did not take part in forging the name, he did not commit forgery, but abetted it. 25 C. 277, 3 M. 4, 17 C. W. N. 354 14 Cr. L. J. 129 18 Ind. C. 881.

—making a false document is one thing and causing a false document to be made is another 17 C. W. N. 354; 14 Cr. L. J. 129; 18 Ind. C. 881.

—the term "makes" in the sec. means creates or brings into existence. 10 Lah. 265. 1928 Lah. 681; 111 I. C. 435; 29 Cr. L. J. 851, 38 A. 430 *Rel. on*.

—a writing may purport to be a will although it turns out to be technically defective. Consequently, though incomplete and ineffective it cannot be said to have been not made within the meaning of sec. 464. 10 Lah. 265; 1928 Lah. 681. 111 I. C. 435; 29 Cr. L. J. 851, 41 M. 589 *Rel. on*.

—a Mahomedan who executes a false *Kabinnamn* in favour of his alleged wife with the intention of claiming her property, is not guilty of making a "false document" within s. 464 69 I. C. 451; 23 Cr. L. J. 723.

—the fact that a man who files a document is interested in establishing its contents does not raise a presumption that he filed it knowing it to be forged. Conduct is the principal criterion of guilty knowledge; where a charge is laid against an accused under s. 465 read with sec. 471 he cannot be convicted and sentenced under s. 466 read with sec. 471. 17 C. W. N. 94; 13 Cr. L. J. 449; 15 Ind. C. 81.

—the mere signing a telegram in another's name where it is not shown to have been done with intent to injure him and where it does not actually injure him, does not constitute the offence of forgery. 18 Cr. L. J. 76; 25 Ind. C. 668.

—if an accused made a false hammer for making false marks on timber to make it appear that the timber so marked was marked with genuine marks by the officer who had to pass them, he would be guilty of forgery. 3 Bur. L. J. 265.

—a person counterfeiting marks in trees with a view to use them as evidence that the trees had been passed for removal by the

Ss. 463, 464, 465. (Forgery, making false document, punishment for forgery)—*contd.*

ranger of a forest is guilty of making a false document within sec. 464 I. P. C. 27 Bom. L. R. 599, 7 C. 352, *Diss.* The possession of a counterfeit stamp for making such an impression is punishable under s. 473 I. P. C. 27 Bom. L. R. 599.

appended to his application
obtain wrongful gain and
id 471 I. P. C. 76 I. C. 225:

—conviction for forgery based on evidence of finger print expert alone is bad. 77 I. C. 423: 25 Cr. L. J. 375, 4 Lah. 246: 1923 Lah. 622, 1922 Pat. 73 Ref.

—the nature of the offence committed does not depend on the use to which the forged document was put. If it was used fraudulently or dishonestly and if it purports to be a valuable security the punishment provided by s. 467 and not that provided by s. 465 would apply. 28 C. W. N. 947: 40 C. L. J. 135; 82 I. C. 145; 25 Cr. L. J. 1217.

S. 466. (Forging of record of court or of public register, &c.)

—the elements of fraud or dishonesty must be present in the mind of the accused to bring his act under ss. 466 and 471. 28 C. 434. 5 C. W. N. 609.

—alteration of name or using it as genuine one to ob offences under ss. 466 and 471.

—the section does not knowingly makes a false entry; other document is forged by *contra.*, this sec. applies to both public servants and private individuals. 13 P. R. 1895.

—this sec applies to the forging of a Register of marriages of Mohamedans kept by *kazi*. 1 Weir 541.

—a document purports to be made by public servant notwithstanding of the seal and signature. 5 W. R. 96.

—a person is not guilty under this sec. for giving a true colour to a false document knowing it to be so. Rat. Un. Cr. 583: Cr. Rat. 42 of 1891.

—the offence requires the fraudulent intention only in the mind of the accused. 14 C. 513.

—there is nothing illegal in a person being convicted for

467 but the court should choose which section is more suitable and after convicting under one of those two sections it will be quite unnecessary to add a charge under s. 468 also. 86 I. C. 923: 1925 Oudh. 413; 26 Cr. L. J. 927.

S. 467. (Forgery of valuable security, will, &c.)

—to apply this sec. it is not sufficient that some possible intent may be inferred from the facts but it is necessary that such intent should be established by evidence 6 C. W. N. 382, *contra*, 6 M. L. T. 266

—the writer of a false receipt is not guilty under s. 467 where there is no evidence that he was present at the execution of the receipt or that he helped any one to make use of it. 1925 Cal. 192: 82 I. C. 261 25 Cr. L. J. 1253, 7 C. 352 *fol*.

—where a person did not make sign or execute a false document dishonestly or fraudulently but was merely instrumental in getting it made he is not guilty of forgery under s. 467 I. P. C. but is guilty of abetment thereof. 1929 Lah. 210: 113 I. C. 68: 30 Cr. L. J. 52

—an unexecuted document though it may not be a valuable security, is to be a valuable security.

—is not a valuable security. 10 C. 304.

—a kabulyat is a valuable security for the purposes of sec. 467 I. P. C. and remains such, even after the expiration of its terms. 88 I. C. 283: 26 Cr. L. J. 1115: 1925: Nag 337

—receipt for money order under false signature is forging a valuable security and is punishable under s. 467. 24 Bom. L. R. 99: 66 I. C. 328 23 Cr. L. J. 264: 1922 Bom. 82.

—an incomplete bond or promissory note bearing forged signature is valuable security. 38 A. 430, but a blank paper or a bond barred by limitation is not a valuable security. 15 W. R. 19.

—material alteration in an agreement in writing is forgery of valuable security. 41 M. 589.

—where a person falsely puts his name down as an attesting witness to the signature of some body who, he knows, did not sign, he is guilty of forgery just as well as the scribe. Such an attesting witness must be put on his trial on a charge under s. 467 read with s. 120-B. 1929 Cal. 539: 1929 Cr. C. 194.

—mere antedating of a document is not forgery unless the antedating had or could have had any operation to the prejudice of any one. 5 Pat. 573: 98 I. C. 252: 1926 Pat. 535: 27 Cr. L. J. 1308, 98 I. C. 111: 8 Pat. L. T. 104: 1927 Pat. 87: 27 Cr. L. J. 1263.

—the writer of a forged receipt is not punishable under s. 467 if there is no evidence that he was present when the receipt was executed or that he helped some one in making use of it. 1925 Cal. 192.

—where it appeared that certain office procedure was not followed but the act of taking thumb impression though contrary to rules was not actuated by fraud or dishonesty, a conviction under ss. 467 and 109 I. P. C. could not be sustained. 29 Cr. L. J. 1031: 10 Lah. L. J. 369: 112 I. C. 359.

—benefit of doubt should be given to accused. 34 P. L. R. 1907: 1 P. W. R. 1907, 5 Cr. L. J. 57.

Ss. 463, 464, 465. (Forgery, making instrument for forgery)—contd.

ranger of a forest is guilty of making a
I. P. C. 27 Bom. L. R. 599, 7 C. 35
counterfeit stamp for making such an im,
s. 473 I. P. C. 27 Bom. L. R. 599.

id

—conviction for forgery based on an expert alone is bad, 77 I. C. 423. 25 Cr. L. 1923 Lah. 622, 1922 Pat. 73 Ref.

—the nature of the offence committed, the use to which the forged document was put, fraudulently or dishonestly and if it purports to give security the punishment provided by s. 467 and by s. 465 would apply 28 C. W. N. 947. 40 C. L. 145: 25 Cr. L. J. 1217.

S. 466. (Forging of record of court or of public document &c.)

—the elements of fraud or dishonesty must be present in the mind of the accused to bring his act under ss. 466 and 467: 5 C. W. N. 609.

—alteration of name and using it as genuine one to obtain offences under ss. 466 and 471.

—the section does not require knowingly makes a false entry in any other document is forged by the accused, this sec. applies to individuals. 13 P. R. 1895.

—this sec. applies to the forging of a Register of marriages of Mohammedans kept by *Kazi*. 1 W. R. 541.

—a document purports to be made by public servant notwithstanding the seal and signature. 5 W. R. 96.

—a person is not guilty under this sec. for giving a true colour to a false document knowing it to be so. Rat. Un. Cr. 533: Cr. L. 42 of 1891.

—the offence requires the fraudulent intention only in the mind of the accused. 14 C. 513.

—there is nothing illegal in a person being convicted for forgery. The

467 but the court should choose which section is more suitable and after convicting under one of those two sections it will be quite unnecessary to add a charge under s. 468 also. 66 I. C. 923: 1915 Oudh. 413: 26 Cr. L. J. 922.

S. 467. (Forgery of valuable security, will, &c.)

—to apply this sec. it is not sufficient that some possible intent may be inferred from the facts but it is necessary that such intent should be established by evidence 6 C. W. N. 382, *contra*, 6 M. L. T. 266.

—the writer of a false receipt is not guilty under s. 467 where there is no evidence that he was present at the execution of the receipt or that he helped any one to make use of it. 1925 Cal. 192: 82 I. C. 261: 25 Cr. L. J. 1233, 7 C. 352 *fol*.

—where a person did not make sign or execute a false document dishonestly or fraudulently but was merely instrumental in getting it made he is not guilty of forgery under s. 467 I. P. C. but is guilty of abetment thereof. 1929 Lab. 210: 113 I. C. 68: 30 Cr. L. J. 52

—an unregistered document, though it may not be a valuable security until registration is completed, "purports" to be a valuable security under this sec. 25 C. 277.

—a *sanad* conferring a title of dignity is not a valuable security. 10 C. 584

—a *kabulyat* is a valuable security for the purposes of sec. 467 I. P. C. and remains such, even after the expiration of its terms. 88 I. C. 283: 26 Cr. L. J. 1115: 1925 Nag 337

—receipt for money order under false signature is forging a valuable security and is punishable under s. 467. 24 Bom. L. R. 99: 66 I. C. 428: 23 Cr. L. J. 261: 1922 Bam 82

—an incomplete bond or promissory note bearing forged signature is valuable security. 38 A. 430, but a blank paper or a bond barred by limitation is not a valuable security. 15 W. R. 19.

—material alteration in an agreement in writing is forgery of valuable security. 41 M. 589.

—where a person falsely puts his name down as an attesting witness to the signature of some body who, he knows, did not sign, he is guilty of forgery just as well as the scribe. Such an attesting witness must be put on his trial on a charge under s. 467 read with s. 120-B 1929 Cal. 539: 1929 Cr. C. 194.

—mere antedating of a document is not forgery of valuable security. 5 Pat. 573: 98 I. C. 111: 8 Pat. L. T. 1308, 98 I. C. 111: 8 Pat. L. T. 1308

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—where it appeared that certain office procedure was not followed but the act of taking thumb impression though contrary to rules was not actuated by fraud or dishonesty, a conviction under ss. 467 and 109 I. P. C. could not be sustained. 29 Cr. L. J. 1031: 10 Lab. L. J. 369: 112 I. C. 359.

—benefit of doubt should be given to accused 34 P. L. R. 1907: 1 P. W. R. 1907, 5 Cr. L. J. 57.

Ss. 463, 464, 465. (Forgery, making false document, punishment for forgery)—contd.

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S. 466. (Forging of record of court or of public register, &c.)

—the elements of fraud or dishonesty must be present in the mind of the accused to bring his act under ss. 466 and 471. 28 C. 434: 5 C. W. N. 609.

—alteration of name and using it as genuine one to offences under ss. 466 and 471.

—the section does not knowingly makes a false entry but to cases where certificate or other document is forged by unauthorised person. 7 C. L. R. 356, *contra.*, this sec. applies to both public servants and private individuals. 13 P. R. 1895.

—this sec. applies to the forging of a Register of marriages of Mohamedans kept by *kazi*. 1 Weir 541.

—a document purports to be made by public servant notwithstanding of the seal and signature. 5 W. R. 96.

—a person is not guilty under this sec. for giving a true colour to a false document knowing it to be so. Rat. Un. Cr. 583: Cr. Rat. 42 of 1891.

—the offence requires the fraudulent intention only in the mind of the accused. 14 C. 513.

—there is nothing illegal in a person being convicted for

after convicting under one of those two sections it will be quite unnecessary to add a charge under s. 468 also. 86 I. C. 993: 1925 Oudh. 413: 26 Cr. L. J. 929.

S. 467. Forgery of valuable security, will, &c.]

—to apply this sec. it is not sufficient that some person's intent may be inferred from the facts but it is necessary that such intent should be established by evidence. 6 C. W. N. 382, contra. a M. L. T. 256.

—the writer of a false receipt is not guilty under s. 467 where there is no evidence that he was present at the execution of the receipt or that he helped any one to make use of it. 1913 Cal. 192; 82 I. C. 261; 23 Cr. L. J. 1233; 7 C. 332 f. 2.

—where a person did not make sign or execute a false document dishonestly or fraudulently but was merely instrumental in getting it made he is not guilty of forgery under s. 467 I. P. C. but is guilty of abetment thereof. 1929 Lah. 210; 113 I. C. 68; 30 Cr. L. J. 52.

—an unregistered document, though it may not be a valuable security until registration is completed, "purports" to be a valuable security under this sec. 25 C. 277.

—a sanad conferring a title of dignity is not a valuable security. 10 C. 384.

—a karniyat is a valuable security for the purposes of sec. 467 I. P. C. and remains such, even after the expiration of its term. 88 I. C. 243; 26 Cr. L. J. 1115; 1923 Nag 337.

—receipt for money order under false signature is forging a valuable security and is punishable under s. 467. 24 Bom. L. R. 99; 66 I. C. 123; 23 Cr. L. J. 264; 1922 Bom. 82.

—an incomplete bond or promissory note bearing forged signature is valuable security, 38 A. 430, but a blank paper or a bond barred by limitation is not a valuable security. 15 W. R. 19.

—material alteration in an agreement in writing is forgery of valuable security. 41 M. 589.

—where a person falsely puts his name down as an attesting witness, who, he knows, did not sign the document, as well as the scribbles. Much trial on a charge under s. Cr. O. 194.

—is not forgery unless the portion to the prejudice of any one. 3 Pat. L. T. 104; 1926 Pat. 535; 27 Cr. L. J. 1308; 98 I. C. 111; 8 Pat. L. T. 104; 1927 Pat. 87; 27 Cr. L. J. 1203.

—the writer of a forged receipt is not punishable under s. 467 if there is no evidence that he was present when the receipt was executed or that he helped some one in making use of it. 1925 Cal. 192.

—where it appeared that certain office procedure was not followed but the act of taking thumb impression though contrary to rules was not actuated by fraud or dishonesty, a conviction under ss. 467 and 109 I. P. C. could not be sustained. 29 Cr. L. J. 1031; 10 Lab. L. J. 369; 112 I. C. 352.

—benefit of doubt should be given to accused. 34 P. I. 1907; 1 P. W. R. 1907; 5 Cr. L. J. 57.

S. 467. (Forgery of valuable security, will &c.)—contd.

—when a person sells a note purporting, by an endorsement on it, to have been sold to his firm by the persons named in the endorsement, he is punishable under ss. 467 and 471. 15 O. 269.

—the fact that a person charged with an offence under s. 471 I. P. C. is himself the forger, is no reason why he should not be charged under s. 471, when he cannot be charged under s. 467 owing to the latter offence being committed beyond the jurisdiction of the court. 13 O. L. J. 862; 17 Ind. C. 798.

—a person convicted under s. 467 and s. 109 I. P. C. cannot subsequently be convicted under s. 471 read with s. 467 because s. 467 is only directed against person other than forger. 39 I. C. 527; 29 Cr. L. J. 1387; 21 N. L. R. 152, 88 I. C. 1051; 26 Cr. L. J. 1275.

—s. 471 I. P. C. is no bar to the imposition of separate sentences on an accused person convicted at the same trial of both the offence of forgery and using the forged document as genuine; sec. 35 Cr. P. C. authorises the imposition of such separate sentences. 52 M. 532; 56 M. L. J. 554; 1929 M. W. N. 279; 119 I. C. 63; 30 Cr. L. J. 983; 1929 Mad. 450, 23 A. 84. *Disapproved.*

—a M. may proceed under s. 471 without the sanction of the Civil Court but in a proceeding under s. 467 previous sanction must be obtained. 16 Cr. L. J. 617; 30 Ind. C. 441, 14 C. W. N. 479; 10 Cr. L. J. 230 *Ref.*

—s. 195 Cr. P. C. renders sanction necessary in prosecution for any offence described in sec. 463 I. P. C. and s. 463 I. P. C. covers forgery for which penalty is provided under s. 467 I. P. C. 14 C. W. N. 479.

—it is not safe to base the conviction entirely upon the comparison of the handwriting. But the court may see for itself whether certain handwriting placed before it are similar or not. 65 I. C. 426; 23 Cr. L. J. 74.

—it is not safe to convict for forgery relying only on the evidence of an expert witness. 86 I. C. 428; 1925 Nag. 358; 26 Cr. L. J. 796.

—It is an offence under s. 467 to forge a document even though there is no intention to use it. 11 O. L. J. 640; 1 O. W. N. 362; 81 I. C. 986; 25 Cr. L. J. 1162; 1925 Oudh 158.

—where certain office procedure was not followed but there was nothing to show that the act of taking thumb impression contrary to rules was actuated by fraud or dishonesty, held that under those circumstances a conviction under ss. 467 and 109 I. P. C. could not be sustained. 113 I. C. 359; 29 Cr. L. J. 1031; 10 Lah. L. J. 369.

—where a Bench clerk received a sum of money paid in as a receipt to cover up a false receipt to cover up came under the provision. 33 I. C. 338; 25 Cr. L. J. 1031; 10 Lah. L. J. 369. *Noted and not fol.* 11. M.

S. 467. (Forgery of valuable security, will &c.)—*contd.*

—the essentials of the offence under this sec. are (1) that the document should be altered, (2) that the alteration should be done with the intention of causing injury or damage to some person, and (3) that it should be done dishonestly or fraudulently. Where the President of an Union Board was charged with having made an incorrect entry in the minutes of proceedings recording a false resolution purporting to be made by the Board sanctioning a sum of Rs 50 for legal expenses and it was not shown that he did anything more than expediting the payment of the sum which was really due, no offence was committed under s. 467 or s. 464 I. P. C. 1931 M. W. N. 361.

S. 468. (Forgery for purpose of cheating).

—prisoner deceiving employer by falsifying account-books in prisoner's custody, such deception being likely to cause damage to employer is rightly convicted under s. 468 I. P. C. instead of under s. 465. 18 W. R. Cr. 46.

—an application to Universality for duplicate certificate by person not entitled, is guilty of attempt to cheat and forgery. 25 M. 726.

—where at the instigation of one person another forged a letter purporting to be written by the Governor of the Province, held on the facts of the case that it might be presumed that the document was forged with the knowledge that it would be used to defraud a person and the writer was rightly convicted under s. 469 I. P. C. while the instigator was punished of offences under s. 468 read with s. 109 and ss. 471 and 511 I. P. C. and a heavier sentence might be imposed on the instigator than that imposed on the principal offender. 101 I. C. 493; 29 Cr. L. J. 461; 9 Lah. L. J. 103, 1927 Lah. 724.

—where cheating is committed by causing the despatch of bogus telegram the accused will be tried in the Court having jurisdiction over the place where the telegram is despatched. 99 I. C. 127; 28 Cr. L. J. 95; 1927 Mad. 77.

—where court fee stamp was purchased for a client across which the stamp vendor wrote the client's name but it was not eventually used for that client and instead of obtaining refund the accused, to save his trouble, altered the name on the stamp and used it for another client, held that it was not clear whether he did so dishonestly or fraudulently, consequently he should be given the benefit of doubt. 1931 Lah. 337; 1931 Or. C. 465; 32 P. L. R. 432.

S. 469. (Forgery for purpose of harming reputation).

—where a draft petition was prepared with the intention being used as evidence of a matter, it was held that it fell sec. 29 I. P. C. and as it contained false statements calculated to injure the reputation of a person the offence was held to s. 469. 2 B. L. R. A. Cr. 12; 10 W. R. Cr. 61.

S. 471. (Using as genuine a forged document)—*contd.*

applied for entry in the revenue papers so as to include certain additional names therein and it appeared that the signature of certain parties were put in as though it was authorised, held that the accused were liable to be convicted under s. 471. 1931 All. 258; I. R. 1931 All. 284; 130 I. C. 492; 32 C. L. J. 559; 1930 A. L. J. 1451.

For the meaning of the words "fraudulently or dishonestly uses as genuine any document," see notes under s. 464.

—to constitute the offence, the use of the document must be for one of the purposes mentioned in sec. 463, so an involuntary production of a document in obedience to an order of the court is no use of it, 36 M. 387, 28 M. L. J. 486, and if under such circumstance the accused gives evidence in support of the forged document that does not amount to using it as genuine. 36 M. 392, 34 M. L. J. 18f.

—the production of a forged document in obedience to an order of the court is not an offence under this section but if the production of the document is brought about by conspiracy on the part of the accused it is punishable. 88 I. C. 18f; 1925 Nag. 345; 26 Cr. L. J. 1093, 36 M. 387 and 392 *Ref.*

—when a complainant being asked by the court to produce documents in support of his complaint produces certain forged documents he cannot escape punishment on the ground that the production was involuntary one. 88 I. C. 595; 26 Cr. L. J. 1171; 1925 Lah. 333; 6 Lah. 50

—when a forged document is presented for registration it amounts to user for the purposes of s. 471 I. P. C. 89 I. C. 1050; 26 Cr. L. J. 1482.

—a person can be convicted of an offence under s. 471 I. P. C. if he is found to have actively participated in the process of presentation of a forged document for registration, even though he did not physically present it for registration. 52 M. 532; 1929 M. W. N. 279; 119 I. C. 63; 30 Cr. L. J. 983; 56 M. L. J. 554; 1929 Mad. 450; 29 L. W. 559

—an offence under s. 471 I. P. C. has no relation to the Registration Act and is governed by entirely different principles.

—the offence under s. 471 I. P. C. is not an offence under the Registration Act. 1929 Cr. C. 252; 119 I. C. 883; 30 Cr. L. J. 1101.

—in order to convict an accused under s. 463 or s. 471 when a forged document is found in his possession, the prosecution must explain how the document came to be with him or must prove that he used the document. 89 I. C. 393; 1925 Nag. 294; 26 Cr. L. J. 1358; 8 N. L. J. 87

—the filing of a document as the basis of a plaint or as necessary sequel to the pleas in the plaint is itself an user; it then becomes incumbent on the accused to show that he filed

S. 471. (Using as genuine a forged document)—contd.

—In a criminal trial the burden of proof is on the prosecution to make out his case. But where in a prosecution under ss. 167 and 471 I. P. C. the accused was alleged to have filed a receipt in a suit on a promissory note against him, and he pleaded that the receipt filed by the pleader was not the same as that given by him, to the pleader for filing, there was a fair presumption that his document given to the pleader was the document filed. 1930 Mad. 192; 1930 M. W. N. 76; 1930 Cr. C. 192.

—no sanction is required for the prosecution of a person when he is not a party to the proceeding. 26 M. L. J. 220.

—It is doubtful whether a witness who swears to the truth of a document in court can be said to abet its use. 15 C. W. N. 565.

—a punishment of four years' rigorous imprisonment to one who uses a forged document and 24 years' rigorous imprisonment to one who has abetted the same, is not severe. 49 C. L. J. 193; 929 Cal. 203; 116 I. C. 632; 30 Cr. L. J. 656.

—If A takes a *Hundi* from S. knowing that the latter has fabricated it, the former is guilty under s. 474, and if A negotiates it knowing it to be a forged document, he is guilty of the more serious offences punishable under s. 471 I. P. C. 30 P. W. R. 1916; 7 Cr. L. J. 474; 36 I. C. 154.

S. 472. (Making or possessing counterfeit seal etc. Production was commit forgery.)

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—the impressor amounts to forgery unless it is in the manner. 26 Cr. L. J. 142

—a person is guilty of forgery if he Judh. 158; 1 C. I. P. C. if he

—having possession of document described in s. 471 knowing it to be forged and intending to use it as genuine. 67 M. W. N. 279; 11 C. L. J. 110.

Mad. 450 29 I. C. sufficient to say that the prisoner might possibly

—an offered document. The guilty intent must be proved, Registration Act R. Cr. 12. (gap no.)

Therefore, where a document is used under s. 471 and s. 474 cannot stand together, and under s. 472

the latter Act is of the 500:

—forged document as genuine, and that each of the document is of the explanation given in ss. 466 and 467 I. P. C., 16 B. 165.

he used the document in a case of an agreement by five persons two signed 1358; 8 N. L. J.

—the filing of a document without necessary sequel other is punishable under s. 474 I. P. C. it then becomes

S. 475. (Counterfeiting device or mark used for authenticating documents described in s. 467 or possessing counterfeit marked material.)

—to convict under s. 475 the document which the accused has in his possession must have some counterfeit device or mark upon it and the accused must have the document in his possession with intent to using such device or mark for the purpose of giving the appearance of authenticity to the document. 15 W. R. Cr. 19.

—what is necessary to support a charge under s. 475. 16 B. 165.

—the charge should be specific. 15 B. 189.

S. 477. (Fraudulent cancellation, destruction, etc., of will, authority to adopt or valuable security.)

—tearing up of a *puttah*, or a promissory note, or a registered conveyance, is the destruction of a valuable security. 3 W. R. Cr. 38, 12 M. 54, 1 Weir 554.

—but where the prosecution failed to show that the act of the accused in destroying a *puttah* was done with the intention of causing damage or injury to the complainant, held that the act of destroying the *puttah* might have been a very foolish act but the conviction of the accused under the section could not be maintained. 23 A. L. J. 990, (38 A. 430, 41 M. 589) *Dist.*

—the fact that a document has not been stamped and is not, therefore, receivable in evidence does not prevent its being a valuable security. 7 M. H. C. R. App 26.

—a person may secrete a document not only when the existence of the document is unknown to other persons and for the purpose of preventing the existence of the document coming to the knowledge of anybody but also when the existence of the document is known to others. In the latter case he may secrete it for the purpose, for example, of preventing it being produced in evidence or for the purpose of raising difficulties in the way of its being produced in evidence. But it is not necessarily enough to show that upon an occasion upon which it became his duty to produce the document he failed to discharge that duty, even though this may be cogent evidence in certain circumstances. The fact that a man perjures himself by denying the existence of a document which to his knowledge is in his custody would be a still more cogent piece of evidence. But whether the offence under this sec. of secreting the document is committed or not depends upon the circumstances. 35 C. W. N. 425; 1931 Cal. 184; 1931 Cr. C. 248, Sp. B.

—suppression of a document may amount to secretion. 35 C. W. N. 425; 1931 Cal. 184; 1931 Cr. C. 248 Sp. B.

S. 477A. (Falsification of accounts.)

—the removal of a new court-fee stamp from a document and substitution of used up stamp, with alterations of figures do not come within this sec. 47 C. 71; 23 C. W. N. 925; 30 C. L. J. 259.

—making a false entry in a book or register to conceal a previous fraudulent or dishonest act, falls within s. 477A, as the

S. 477A. (Falsification of accounts)—*contd.*

intention is to defraud, 35 C. 450, 13 C. 349, 8 A. 653, 11 M. 411, 42 M. 558, 4 B. 657, 6 N. W. P. 56, 2 N. W. P. 11, 3 A. 221, 553, 8 A. 653 but where there is no intention to commit fraud no offence is committed. 36 C. 955; 14 C. W. N. 82; 22 O. 313, 35 C. 450 *Dist.*, 15 Bom. L. R. 708.

—where a Post Master handed over a V. P. to the addressee

—where a partner of a firm has been appointed to manage the business and write accounts, he is liable under s. 477 A, if he falsifies the accounts. 88 I. C. 189 26 Cr. L. J. 1101; 1925 Sind 328.

—falsification of accounts by an accountant of a Bank with the intention of deceiving the Bank authorities in case of liquidation is in law "an intent to defraud." 47 A. 948; 26 Cr. L. J. 1384; 23 A. L. J. 637; 89 I. C. 320; 1925 All. 654.

—where it is found that the accused made false entries in the accounts to cover his own defalcation he cannot be convicted under s. 477 A, I. P. C. 20 A. L. J. 662; 68 I. C. 834; 23 Cr. L. J. 610; 1922 All. 435.

—the amendment of the law which enables a Magistrate with first class powers to try charges under s. 477 A. I. P. C. is a matter of procedure only and the amending Act applies notwithstanding that the case was commenced before the amending Act came into force 28 C. W. N. 998; 1924 Cal 983; 81 I. C. 705; 26 Cr. L. J. 353.

—where a person is charged with falsification of accounts any number of false entries or omission of entries may be proved in order to prove the falsification; it is not contrary to s. 334 Cr. P. C. 34 C. W. N. 925; 1931 Cal 8; 129 I. C. 356; 32 Cr. L. J. 318; 1931 Cr. C. 40.

—a series of falsification of accounts made to cover a single act of defalcation may be laid in a single charge under this sec. 11 Lah. L. J. 384; 1929 Lah. 843; 118 I. C. 654; 1929 Cr. C. 57; 30 Cr. L. J. 958.

S. 478. (Trade mark.)**Scope of the sec.**

—a mark to be a trade mark must be a mark used for denoting that the goods are manufacture or merchandise of a particular person. 27 C. 776; 4 C. W. N. 423.

—a trade mark must be some visible concrete device or design affixed to goods to indicate that they are the manufacture of the person whose property the trade mark is. As in the particular case there was no proved trade mark of the complainant, no conviction. 17 C. W. N.

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as defined in s. 478 I
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[illegible]

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S. 478. (Trade mark.)

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—a trade mark must be some visible concrete device or design affixed to goods to indicate that they are the manufacture of the person whose property the trade mark is. As in the particular case there was no proved trade mark of the complainant which could be infringed there was no conviction. 17 C. W. N. 404
as defined in s. 478 I. P. C.
of the complainants.

S. 478. Scope of the sec.—contd.

tered in England, but must include the whole design on the top of the box and the black label pasted round the side. 13 C. W. N. 957: 30 I. C. 1007: 16 Cr. L. J. 719.

—a distinction made between the manufacturer but the property in that mark as have been imported by porters of hand made sugar used a distinctive mark denoting that the sugar contained in the bags so marked had been imported by them and the accused were found as having used the same mark, whereby the complainants had established a special trade, the accused were guilty of using a false trade mark. 39 A. 123: 14 A. L. J. 1080: 17 Cr. L. J. 535.

—the trade mark may consist of a name impressed in some distinctive way. 17 C. W. N. 227: 40 C. 281: 14 Cr. L. J. 68: 18 I. C. 404.

—but the title "Sri Chaudh Panchang" put on the calendars was held not to fall within the definition of "trade mark." 26 Bom. 289: 3 Bom. L. R. 893.

—a trade mark may be acquired by adoption and user upon a vendible article. A photographer may apply a trade mark to the photographs which he sells and the provisions of this article are applicable to such trade mark. 13 Bur. L. R. 336.

—using a mark for a period of 6 years in respect of goods sold makes such a trade mark. 1925 Cal. 149: 81 I. C. 922: 25 Cr. L. J. 1098.

—where a name is duly appended to goods, such name is a trade mark, for whose validity there is no requirement of any length of time during which the goods should be in the market with the name appended. 12 S. L. R. 129: 50 I. C. 165: 20 Cr. L. J. 277.

—a complainant has to prove that the goods which are the subject of the mark in question are manufactured and sold by him and the goods are reputed in the market to be his manufacture alone. Where the goods were known to be manufactured and sold by both the complainant and the accused on a large scale no offence was committed. 1928 Cal. 235.

—a person may to some extent appropriate to his own use a name suggested by his trade, without infringing the law relating to trade-marks or trade descriptions. In this case the accused who sold fish-hooks in boxes similar to those of the complainants with a design of one fish with its head and tail turned up, were held not to have infringed the trade-marks of the latter who also sold fish-hooks with a design of two fish crossed, with their heads and tails turned up. 31 C. 411.

—the general resemblance or get up irrespective of the circumstance that the registered trade mark is different, does amount to counterfeiting a trade mark. 16 Bom. L. R. 78: 2 Bom. Cr. 177.

S. 478. Bona fide dispute—contd.

complainant and the accused had applied labels to his bottles which were similar to those used by the complainant, but on closer examination great difference in the labels were discernible, held that the accused was not guilty under ss. 483 and 486 I. P. C. of using a false trade-mark or of selling goods to which a counterfeit trade-mark was applied. See also 40 C. 281: 17 O. W. N. 227: 14 Cr. L. J. 68: 18 I. C. 404.

Civil Cases.

—in a civil suit it has been held by the Calcutta H. C. that a trade-mark is a mode of warranting the origin of goods to which it is attached, or their trade association, and it is of the essence of trade-mark that its representation should be true. 15 C. W. N. 280.

—in the same case it was held that in India there is no system of registration nor is there any provision for statutory title to a trade-mark so that the rights of the parties must be determined in accordance with the principles of the English Common Law.

—in another civil case of the same H. C. it has been held that the right of exclusive user of a name or a number as a trade-mark is not so absolute and unqualified right which would entitle the owner to prevent another person from using it under all circumstances. It is only when the use of that name or number deceives or is reasonably likely to deceive the public that it can be interfered with or prevented. 24 C. 364.

Limitation.

—where the complainants were aware of the alleged infringement so long ago as 1893 and there was nothing before the court to hold that the infringement was discontinued and was lately started in 1898 was dismissed. 24 C. 246: 10 Marks Act. 22 M. I. C. 787.

S. 479. (Property mark.)

—the term "movable property" in s. 479 is intended to include a class or category of properties falling under one ownership, not merely the parts of it which may pass from the hands of the owner into other hands. The class is stable though the units are ambulatory. A property mark is intended to denote ownership over all movable property belonging to him, whether it is all one kind or different kinds. So long as the person owns movable properties his property mark which has been or may be impressed upon them remains his, though any particular article out of it may after such impression pass out of his hands and cease to be his. 6 Bom. L. R. 513, p. 515.

S. 480. (Using false trade mark.)

—books are covered by the word "goods". 3 C. W. N. 97: 26 C. 232, 31 M. 512: 17 M. L. J. 490, 26 B. 259: 3 Bom. L. R. 853.

S. 480. (Using false trade mark)—contd.

—in order to establish a case under s. 480 I. P. C. the prosecution must prove that the accused marked goods in a manner reasonably calculated to cause it to be believed that the goods so marked were the manufacture or merchandise of some other person and not of such person. It is not necessary to be proved that the accused in such a case had acted with intent to defraud, but if the accused proves that he acted without intent to defraud, he is entitled to be acquitted. 1929 Rang. 322 : 1929 Cr. C. 498.

—a trader even with some claim to the mark or name cannot adopt a trade-mark which causes his goods to bear the same name in the market as those of a rival trader. The actual physical resemblance of the two marks is not to be the sole question for consideration. If a purchaser looking at the article offered to him would naturally be led, from the mark impressed on it, to suppose it to be the production of the rival manufacturer and would purchase it in that belief the court considers the use of such a mark to be fraudulent. 1929 Rang. 322 : 1929 Cr. C. 498.

—where the trade mark used by the accused was a crescent encircling a Crown over the letters A. M. R. and that used by the complainant was a crescent encircling a star over the letters A. G. M., held by the Madras H. C. following the cases reported in 11 C. W. N. 887 and 32 C. 431, (see the cases under s. 478) that the dispute was one which might be fitly decided in a Civil Court and that the accused was not guilty of using a false trade-mark or selling goods under a counterfeit trade-mark. 1912 M. W. N. 85 : 13 L. C. 927, 13 Cr. L. J. 175.

—but where the complainant used to import from Holland white shirtings bearing the brand H. B. T. C. 40000 on a label with a design of a lion and a snake and an oval stamp containing
 Bombay Trading Company
 accused had some packages of
 H. P. F. C. 40000, a label
 with two lions and two snakes and an oval stamp containing "Sole importers, Holland Export Company" and a buff heading and it was found that the letters in the two marks were printed in similar types and were similar in size and colour, held by the Calcutta H. C. that the accused had used a false trade mark. 8 C. W. N. 421.

companies it was settled that one company could use the tins of another company, provided the company so using the tins put on the cap a distinctive mark showing that the oil was not manufacture of the company whose tins were being used. In of this agreement the Burma Oil Company could use

S. 482. (Punishment for using a false trade-mark or property-mark)—*contd.*

such a mark or trade-mark. 1925 Cal. 149; 81 I. C. 922; 25 Cr. L. J. 1098

—a person may to some extent appropriate to his own use a name suggested by his trade without infringing the law relating to trade-mark or trade description. 31 C. 411; 8 C. W. N. 307.

—In a prosecution for counterfeiting a trade-mark if the M. is of opinion that there is a *bonafide* dispute between the parties as

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—when a *bonafide* dispute exists between the parties as to the right to use a trade mark, action should be taken before a civil court and not before a criminal court. 11 C. W. N. 887.

—It cannot be said that under no circumstances can a dispute relating to the infringement of a trade mark be entertained by a criminal court and that it should always be adjudicated upon by the civil court. The only thing that can be said is that the criminal court may, in view of the peculiar circumstances of particular case stay its own hands and leave it to the complainant to establish the right in the civil court. 1928 Lah. 186; 9 Lah. 491; 29 Punj. L. R. 610; 29 Cr. L. J. 425; 168 I. C. 607; 9 A. I. Cr. R. 406, 32 C. 431. *Ref.*

—where K ordered certain goods from Europe but refused to

—a trade mark must be some visible and concrete device or design affixed to goods to indicate that they are the manufacture of the person whose property the trade-mark is. It might consist of a name impressed in some distinctive way. There is distinction between a trade mark and a trade name. 40 C. 281; 17 C. W. N. 227; 18 I. C. 404; 14 Cr. L. J. 68.

—where, however, a manufacturer of umbrellas complained that a rival trader had been passing off his umbrellas as the complainant's manufacture by affixing a mark or design closely

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the mark was
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accused was charged in the alternative with offences under ss. 6 and 7 of the Merchandise Marks Act, the case was not dealt with on that footing, held that the conviction under ss. 482, 485 or 486 I. P. C. could not stand, held further that such case ought not to have been brought in the civil court as the dispute in the case was of

S. 482. (Punishment for using a false trade-mark or property-mark)—*contd.*

a civil nature. 40 C. 281: 17 C. W. N. 227: 18 I. C. 404: 14 Cr. L. J. 68.

—in order to entail a conviction of the accused for an offence under s. 482 I. P. C. the trade-mark must be similar. The test of similarity is what . . . deceive a purchaser who . . . It is to be assumed that . . . without distinguishing fea

7 Rang. 169: 118 I. C. 113: 30 Cr. L. J. 882: 1929 Cr. C. 617.

—under s. 486 the onus is on the complainant to show that the accused acted dishonestly, but on the accused to bring himself within exception to that section. 8 C. W. N. 421.

—where on closer examination great differences in the labels were discernible the accused was not guilty under ss. 482 and 486. 11 C. W. N. 887.

—the title of . . . "trade mark" given

—a property
movable property
kind or different k
properties his property mark impressed upon them remains his, though any particular article out of it may after such impression pass out of his hands and cease to be his. 6 Bom. L. R. 513

—in order to prove that a trade-mark is an imitation of the

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—to constitute an offence under s. 482 it must be shown that the goods were marked in a manner, reasonably calculated to cause

—to establish the case of immitigation it is not necessary to show that there has been the use of a mark in all respects corresponding with that which another person has acquired an exclusive right to use. But if the resemblance is such that as not only to

S 482 (Punishment for using a false trade-mark or property-mark)—contd.

show an intention to deceive but also such as to be likely to make unwary purchasers suppose that they are purchasing the article sold by the party to whom the right to use the trade-mark belongs. In other words the standard of the comparison is not that of the experts but of the unwary purchasers. 34 C. W. N. 339; 51 C. L. J. 477; 1930 Cal. 274; 1930 Cr. C. 354.

—where the trade marks are so different that no one would be misled it was held that a conviction under ss. 482 and 486 is bad 7 M. L. T. 309; 11 Cr. L. J. 393; 6 I. C. 683.

—where a manufacturer of *biris* flagrantly and dishonestly imitated the label and slip of another manufacturer with the object of causing it to be believed that the goods of one quality in fact belonged to another, he was guilty under s. 482 I. P. C. 1930 Oudh 360; 1930 Cr. C. 765; 7 C. W. N. 598.

—under s. 482 I. P. C. an intent to defraud is an ingredient of the offence but when it has been proved that a trade-mark is a false trade-mark then it is to be presumed that the accused has that intent unless he rebuts the presumption when only he is entitled to an acquittal. 1929 Rang. 345; 7 Rang. 169; 118 I. C. 113; 30 Cr. L. J. 882.

Præsumptions.

—under ss. 482 and 486 I. P. C. the prosecution has not to prove the *mens rea*, and as the burden of proving innocence is thrown on the accused under these sections, when once a *prima facie* case has been established, the accused, a Limited Company, can prove its innocence by the evidence of its agents or servants, or otherwise as it thinks fit. 7 Bur. L. T. 116; 7 L. B. R. 306; 15 Cr. L. J. 337; 23 I. C. 689; 7 Bur. L. T. 116.

—evidence of actual deception is not necessary. It is enough if the court finds on a comparison of the two trade marks that the accused was likely to deceive. 1925 Cal. 149; 25 Cr. L. J. 1098; 81 I. C. 922.

—under s. 482 I. P. C. an intent to defraud is an ingredient of the offence but when it has been proved that a trade mark is a false trade mark then it is to be presumed that the accused had that intent unless he rebuts the presumption when only he is entitled to an acquittal. 1929 Rang. 345; 7 Rang. 169; 118 I. C. 113; 30 Cr. L. J. 882.

—even though no cases of purchasers having been deceived by the use of false trade mark are proved, this fact standing alone is insufficient to justify the contention that the accused acted without intent to defraud. The state of mind of the person responsible for the introduction of the trade mark is a most relevant fact which can be established by evidence. In the absence of such evidence the accused cannot be held to have discharged the onus of proving want of intention which was upon him. 1929 Rang. 322; 1929 Cr. C. 498.

S. 432. Limitation.

—the intention of the legislature will be frustrated if it is held that the owner of a trade mark can stand by for several years while his trade mark is being infringed continuously and then bring a criminal complaint in respect of some recent instance in which there has been an infringement. To interpret the section in that way would reduce its provisions to a nullity for it would entirely remove the bar of limitation except in cases where the series of infringements have actually ceased. In the present case the accused was prosecuted once in 1908 and then in 1910 for using a false trade mark, the charge against him being that he sold oil which was not oil manufactured by the Burma Oil Company, Limited, in second hand tins of that company's make, without obliterating the company's trade mark on the tins and he was both times acquitted. When the company by their agent lodged a fresh complaint alleging the commission of a fresh offence by the accused, held that the complaint was barred by s. 15 of the Merchandise Marks Act. 4 Bur. L. T. 83; 12 Cr. L. J. 246; 10 I. C. 787, 22 M. 488 fol.

S. 483. (Counterfeiting a trade mark or property mark used by another).

—where in the case of alleged counterfeiting of a trade-mark, the trade-mark similar to that of the complainant had been moulded in the glass of the bottles on which the name of the hair oil had also been moulded, held that according to sec. 28 I. P. O. it must be presumed that the accused intended to sell the hair oil in those bottles and thereby to cause deception. Onus was on the accused to show that in making these bottles he had no fraudulent intention. 1931 Cal. 445; 1931 Cr. O. 597.

—the complainant had a soda water company and had a special paper label and it appeared that both the bottle and the label had been registered under the Patents and Designs Act. The accused who was the proprietor of another soda water company used the bottles specially belonging to the complainant but it was proved that there was a common fraction in Calcutta for various kinds of bottles to be used by firms indiscriminately and in this particular case the accused acted innocently, held that as there was no intention to do anything harmful a conviction under s. 486 I. P. O. or ss. 6 and 7 of the Merchandise Marks Act was not sustainable and also as there was no counterfeiting within the definition of the word in s. 28 I. P. O. no conviction under s. 483 I. P. O. was sustainable. 32 C. W. N. 1115; 1928 Cal. 873; 117 I. C. 691; 30 Cr. L. J. 832.

S. 485. Making or possession of any instrument for counterfeiting trade mark or property mark.

—where a trade mark consisted of an impression moulded in the glass of which the bottles were made together with label and the person was found in possession of the mould in question with

S. 485. Making or possession of any instrument for counterfeiting trade mark or property mark—*contd.*

the intention of counterfeiting that trade mark, although the apparatus for counterfeiting the label which could complete the trade mark was not found the person should be convicted under this sec 1930 Cal 664 1930 Cr. C 1104.

S. 486 (Selling goods marked with a counterfeited trade-mark or property-mark)

—books are the subject of trade and are goods within the meaning of sec 2 cl (4) of the Indian Merchandise Marks Act (IV of 1889) Therefore when a person sells books with counterfeited property mark, he commits an offence under s. 486, I. P. C. 26 C. 232 3 C. W. N 97.

—a mark to be trade mark must be a mark used for denoting that the goods are manufacture or the merchandise of a particular person. The mere fact that a Bank imported and sold gold bars with a particular mark impressed upon them, a mark which was not originally there but belonged to a Bank no longer in existence, was not sufficient to establish that the mark was the trade mark of the new Bank 27 C. 776: 4 C. W. N. 423.

—a person who uses a label which in general resembles the

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—in a prosecution under this sec. the test is not whether a person who is in the best on the alert and who knows the original well would have been deceived. The proper test is to consider the question from the point of view of the unwary purchasers. 34 C W. N. 524: 1930 Cal. 728: I. R. 1931 Cal. 94: 1930 Cr. C. 1136: 128 I. C. 334: 32 Cr. L. J. 137.

—where the complainant had a soda-water company and had a special paper label and had got both the bottle and the label registered under the Patent and Designs Act and the accused who was the proprietor of another company used the bottle especially belonging to the company but it appeared that there was common practice in Calcutta for various kinds of bottles to be used by several firms indiscriminately and in the particular case the accused acted innocently, held that as there was no intention to do anything harmful a conviction under s. 486 I. P. C. or ss. 6 and 7 of the Merchandise Marks Act was not sustainable. 32 C. W. N. 1115: 1928 Cal. 873.

—s. 15 of the Merchandise Marks Act provides a prosecution for an offence under this sec. within three years from the date of the offence charged. There is nothing in the section to suggest that in case of series of infringement the prosecution should be commenced within three years from the date of the first offence. 1931 Mad. 276: 1930 M. W. N. 1263: 1931 Cr. C. 353, 1928 Cal. 495, 1930 Cal. 275, fol.

S. 486. (Selling goods marked with a counterfeit trade mark or property-mark)—*contd.*

—the National Bank of India was selling gold-bars bearing a certain stamp. On 10-3-1926 and on 19-3-1926 some of the employees of the bank discovered that the accused was selling bars with counterfeit mark and a prosecution was launched within a month from 10-3-1926 under this sec. for selling goods marked with a counterfeit trade mark. The defence was that on the finding that the

C. W. N. 699 : 1928 Cal. 495.

—the word "offence" in s. 15 of the Merchandise Marks Act means the offence charged and the words "first discovery" mean when the complainant first discovered the offence. 32 C. W. N. 699 : 1928 Cal. 495, 34 C. W. N. 339 : 1930 Cal. 274 : 1930 Cr. C. 354

—prosecution in 1898 with the knowledge that the trade mark was being counterfeited from 1893 is time-barred under s. 15 of the Indian Merchandise Marks Act, the remedy lying in civil court only. 22 M. 488.

S. 489-A. (Counterfeiting Currency-notes or bank-notes.)

—for the counterfeiting of a currency note under s. 489A both ability and materials of a particular kind are required; if either of them be absent then there cannot be an attempt to counterfeit. On the other hand to constitute an offence under s. 489 D it is not necessary to prove that the accused had ability to produce a counterfeit note with materials in his possession. 51 A. 470 : 27 A. L. J. 127 : 1928 All. 754 : 116 I. O. 797 : 30 Cr. L. J. 690.

S. 489-B. (Using as genuine forged or counterfeit currency notes or bank-notes.)

—the words "as genuine" govern the verb "uses" only and not any other verb. 94 I. C. 414 : 1926 Lah. 72 : 27 Cr. L. J. 638 : 27 Punj. L. R. 514.

—when a person knowingly sells a forged note to another he is guilty under this sec. whether the purchaser knows it to be forged or not. 94 I. C. 414 : 27 Punj. L. R. 514 : 1926 Lah. 72 : 7 Lah. 80.

—the object of the legislature is to stop the circulation of forged notes by punishing persons who, knowing or having reason to believe them to be forged, do any act leading to their circulation. *above case.*

S. 489-C. (Possession of forged or counterfeit currency notes or bank notes.)

—the mere possession of forged notes is not an offence under the Penal Code. In order to bring a case under this section it is not only necessary to prove that the accused was in possession of

S. 489-C. (Possession of forged or counterfeit currency notes or bank notes)—*contd.*

forged notes but it should also be established (1) that at the time of his possession of the notes he knew them to be forged or had reason to believe them to be so and (2) that he intended to use them as genuine or that they might be used as genuine. 31 Punj. L. R. 867 : 11 Lah. 555 : 1931 Cr. C. 83 : 1931 Lah. 24 : 129 I. C. 494.

—the onus is on the prosecution to prove circumstances which lend clearly, undubitably and irresistibly to the inference that the accused had the intention to foist the notes on the public. 31 Punj. L. R. 867 : 11 Lah. 555 : 1931 Cr. C. 83 : 129 I. C. 494 : 1931 Lah. 24.

S. 489-D. (Making or possessing instruments or materials for forging etc., currency notes or Bank notes).

—in a prosecution under this sec the prosecution is to prove the state of mind of the accused that he had possession of the materials for the purpose of being used for counterfeiting a currency note. In such case the counterfeit need not be perfect. Where it appeared that the accused possessed the materials and the expert gave evidence that it could be used for the purpose of counterfeiting, the accused could be presumed to have had the intention to counterfeit and he was liable to be convicted. 1928 All. 759 : 26 A. L. J. 1391 : 10 A. I. Cr. R. 441. 112 I. C. 911 : 30 Cr. L. J. 47.

—to convict a person under s. 489-D for using a forged note as genuine, the possession of the note does not necessitate his explaining the possession, but the prosecution must prove that he knew it to be forged when he passed it. 81 I. C. 551 : 25 Cr. L. J. 935, 21 M. L. J. 760 : 10 M. L. T. 108. 11 I. C. 241 : 12 Cr. L. J. 377 F. B.

S. 490. (Breach of contract of service during voyage or journey.)

—agreement to convey indigo from fields to Vats does not come within sec 490 I. P. C. 6 W. R. Cr. 80

—the section does not apply to a contract to place the defendant's carts at the complainant's disposal for a specific time to convey a thing from where he pleases to where he pleases. 9 W. R. Cr. 12.

—whether the words "during a voyage or journey" limit the offences against travellers only. 9 W. R. Cr. 12.

Ss. 493-496. (Offences relating to marriage)

—the word "marry" implies going through the form of marriage whether the same is in fact valid or not. 45 C. 941 : 22 C. W. N. 695.

—the word "void" in s. 494 is not used in the technical sense which it has in the Mahomedan law. This Code does not validate marriages which are void under the Mahomedan law. This Code does not validate marriages and void marriages. 1928 Lah. 814 : 29 Cr. C. 314.

Ss 493-496. (Offences relating to marriage)—contd.

—a *nika* or *sagat* or *pnt* marriage comes within the purview of s. 494. 6 W. R. 60, 7 C. L. R. 354, 2 B. H. C. 117, 12 C. P. L. R. 19.

—a custom of *sagai* during the lifetime of the first husband assuming it to be valid, requires strict proof in respect of the particular caste, area and conditions in which the custom operates. 96 I. C. 115 : 27 Cr. L. J. 867 : 1926 Pat. 346 : 7 Pat. L. T. 443.

—a *phinqara* marriage does not come within this sec. 25 P. R. 1888.

—marriage during *iddat* period does not constitute bigamy. 39 C. 409 : 15 C. L. J. 263 : 16 C. W. N. 451 : 13 Cr. L. J. 257, 9 Bom. L. R. 207, 43 P. R. 1882.

—both according to the *sunni* and *shiah* schools, the minor has an absolute power either to ratify or cancel any unauthorised marriage. 19 C. 79, 82

—the publication of banns of marriage does not amount to an attempt to marry. 1 A. 316.

—caste custom of divorce was given effect to in 19 C. 627, 1 Weir 568, 6 B. 126 but not in 19 Bom. L. R. 56.

—a Hindu wife having a Hindu husband cannot marry a Christian, 10 M. 218 or a Mohamedan, 26 M. L. J. 260, 1 Lahore 440,

—where a Hindu convert married a Christian woman according to the rites of the Roman Catholic religion, afterwards, during the lifetime of that wife reverted to Hinduism and married a Hindu woman according to Hindu rites, he was not guilty of bigamy. 33 M. 371 : 11 Cr. L. J. 688 : 8 Ind. C. 572, 30 M. 550 Diss. 3 M. H. C. Ap. 7 fol

—a Christian embracing Muhamedanism cannot marry a second time during the lifetime of the first wife. 14 M. I. A. 809 P. C.

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—a man may be guilty of abetment of bigamy although the girl herself may be, from want of intelligence or knowledge incapable of committing the offence. 6 C. W. N. 343 *contra*. 4 C. 10, but mere consent to be present or mere presence of bigamous
6 B. 126.

... .. must be evidence that the
know that the person be
1931 Lah. 194 : 1931 Cr.

C 314.

—when a woman remarries during the lifetime of her husband under circumstances rendering it an offence under s. 494 I. P. C. the person to whom she is remarried cannot be committed for an offence under s. 494, he may be charged with abetment of the offence only 91 I. C. 533 : 1925 All. 189 : 27 Cr. L. J. 101 : 24 A. L. J. 155.

Ss. 493-496. (Offences relating to marriage)—*contd.*

—the marriage must be strictly proved. 5 C. 566 F. B., 4 P. R. 1874, 17 P. R. 1893: mere statement of the complainant and the woman is not sufficient. 20 A. 166.

—where the first complaint under s. 494 I. P. C. was dismissed on the ground that the complainant had not proved that the woman was his lawfully wedded wife, he could not lodge a first complaint on the same facts. 1928 Lab. 544: 11 Lab. L. J. 197: 1929 Cr. C. 87.

—the father is the proper person to give his daughter in marriage without the consent of the guardian in marriage even if the father has deserted his wife and daughter. . . . marriage without the consent of the guardian in marriage is a sacrament and the marriage which is duly solemnised and is otherwise valid, is not rendered invalid because it was brought about without the consent of the guardian in marriage even in contravention of any express order of the court. A marriage tainted by fraud is a voidable transaction but it is binding until it is set aside by a competent court. Unless it is declared to be invalid it can sustain an indictment for bigamy. 8 P. L. R. 1922: 64 I. C. 500: 23 Cr. L. J. 20, 71 I. C. 215: 24 Cr. L. J. 87. 64 I. C. 500.

—where a Mahomedan husband becomes an *Ahamedia* and thereafter the wife treating him as apostate marries another, she is guilty of bigamy. There is no question of the applicability of *Mens rea* in the case of offences under s. 494. 45 M. 986: 43 M. L. J. 663: 16 L. W. 626: 71 I. C. 65, 24 Cr. L. J. 17: 1923 Mad. 171.

—where the parties were Mahomedans and all that was alleged was that the complainant objected to the marriage on the ground of its being within prohibited degrees and that the parties went to another place and got married, no offence under s. 496 I. P. C. was committed. 193 Mad. 247: 1930 M. W. N. 694: 1931 Cr. C. 367.

—a *Mona sikh* can validly perform his marriage under the *Anand* rites and in respect of the same, the offence of Bigamy can be committed. 82 I. C. 277: 25 Cr. L. J. 1269.

—the husband is "the person aggrieved" within s. 198 Cr. P. C. 25 C. 336.

—where the accused are charged with the principal offence under s. 496 I. P. C. and for abetment thereof there must be a complaint under s. 198 Cr. P. C. 1931 Mad. 247: 1930 M. W. N. 694: 1931 Cr. C. 367.

—in a case of bigamy the person aggrieved, is either the first or the second husband and not the father. 32 A. 78: 7 A. L. J. 10.

—under the Criminal Procedure Code as amended in 1923 a first class Magistrate can try an offence of bigamy without committing it to the Sessions. 75 I. C. 727: 25 Cr. L. J. 39: 1925 Oudh 60.

—the evidence of resemblance of a child to the putative father is admissible. 15 C. L. J. 621.

—where there is a *prima facie* evidence of co-habitation as man and wife, and a long course of treatment of the woman as wife and

Ss. 493-496. (Offences relating to marriage)—*contd.*

the children as legitimate, the presumption of marriage can be rebutted only by clearest evidence 15 G. L. J. 621.

—the brother of a lunatic husband is not a "person aggrieved" 10 B. 340, so also the brother of the second bigamous husband is not the person aggrieved. 25 A. 132.

—where the offence of bigamy is committed by a girl having

—in a case of bigamy the person aggrieved is either the first husband or the second husband, and not the father. 7 A. L. J. 10; 32 A. 78; 11 Cr. L. J. 51; 51 Ind. C. 176, 26 C. 336.

—when a marriage is performed in British India its validity should be determined by the law prevailing in British India. (1914) M. W. N. 278, 26 M. L. J. 360.

S. 497. (Adultery).

—adultery is not *per se* an offence in India. To be punishable under this sec. adultery must be without the consent or connivance of the husband. 1928 Pat. 375. 111 I. C. 762. 9 Pat. L. T. 397.

—"connivance" is the willing consent to a conjugal offence. 21 Weir 13.

—where before the adultery was committed the woman was taken away by her husband the man could not be convicted of attempt to commit adultery. 13 P. R. 1679, 35 P. R. 1902, 1 Weir 569.

—the best available evidence must always be produced. 21 W. R. 13.

—where the only evidence in a charge for adultery was a letter written by the complainant's wife to the accused but which was not proved to have been received nor read by the accused the conviction on such evidence could not stand. 1928 Cal 248

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of the accused that the woman was the wife of the complainant will not avail of the prosecution if they fail to prove the fact of marriage 1928 Pat. 481; 112 I. C. 469; 29 Cr. L. J. 1045.

—validity of marriage is vital one, *de facto* marriage would not be sufficient for a conviction under ss. 497 and 498 7 O. W. N. 143.

S. 497. (Adultery)—contd.

—actual fact of marriage must be proved. 17 Bom L. R. 75; 3 Bom. Cr. C 8; 16 Cr. L. J 213; 27 I. C. 837.

—in countries where system of registration prevails marriage may be proved by the production of the certified copies of the register but in India where no registration prevails it is necessary to set out the facts and circumstances surrounding the alleged ceremony of the marriage to enable the M. to determine the question. 1928 Pat. 481

—intermarriage between sub-castes of *Sudra* is valid and a marriage between a *Kayastha* male and a *Dome* female is valid. 28 C. W. N. 323; 51 C. 488; 81 C. 709; 25 Cr. L. J. 997.

—before a criminal charge for adultery can be preferred, a formal complaint of that offence must be instituted in the manner provided by s. 199 Cr. P. C. 29 C. 415; 60 W. N. 677, F. B.

—where the husband refused to make charge under s. 497, the M. could not convict under that sec 3 M. H. C. Ap 5, 2 C. 415 but see, 38 A. 276 where in a prosecution under s. 498 I. P. C. it has been held that the statement of the husband as a witness in a proceeding under s. 366 may be treated as a complaint within the meaning of s. 4 cl. (b) of the Cr. P. C.

—a complaint under s. 494 can also be treated as a complaint under s. 498 within the meaning of s. 199 if the husband fails to prove additional facts required by s. 366. 61 I. C. 134; 22 Cr. L. J 724.

—the offence of adultery is not a continuing offence. When a person has once been convicted or acquitted of the offence and subsequently he is again found to be guilty of such conduct he may be prosecuted once again in relation to such act. 1928 Bom 536. 30 Bom. L. R. 1435

S. 498. (Enticing or taking away or detaining with criminal intent a married woman).

—enticement implies some blandishment or coaxing. 2 M. H. C. 331, 4 M. H. C. 20

—a person who entices away a married woman to dispose of her in marriage always commits an offence under s. 498. 1931 Lah. 194; 1931 Cr. C. 314, 28 I. C. 651 *Rel. on.*

—the woman should be at the time of "taking or enticing" living under the protection of her husband or of some one acting on his behalf. 15 P. R. 1883.

—the taking away or enticing may not be by the paramour but by a third person. 9 P. R. 1893.

—woman's accompanying the accused of her own free will does not mitigate the offence. 15 P. R. 1883, 1 W. R. 45, but there must be enticing or taking away, 2 W. R. 35, 5 P. W. R. 1215 otherwise the accused is not guilty. 1 C. W. N. 498

—where it is proved that the woman voluntarily went to live with the accused and there was nothing to show that he concealed or detained her in his house for the purpose of illicit intercourse the accused could not be convicted under s. 498 I. P. C.

S. 498. (*enticing or taking away or detaining with criminal intent a married woman*)—*contd.*

1928 All 194 : 29 Cr. L. J. 273 : 26 A. L. J. 403 : 107 I. C. 689 : 9 A. I. Cr. R. 106.

—the marriage must be proved like any other essential fact in the case. The mere admission of the accused is not sufficient. 2 O. W. N. 586.

—the fact that the woman lived with the complainant for a long time and bore children is not avoidance of legal marriage. 34 C. W. N. 227 : 1930 Cr. C. 659 : 1930 Cal. 447.

—where the complainant belonged to a low caste Hindu sect and the only evidence of marriage was that he put vermilion on the forehead of the woman and there was a feast of the caste people but there was no evidence that any ceremony was observed, held that the evidence of marriage was insufficient for the purpose of s. 498 I. P. C. 34 C. W. N. 227 : 1930 Cal. 447 : 1930 Cr. C. 659.

—the marriage must be valid one. 35 P. W. R. 1910, 107 I. C. 98 : 29 Cr. L. J. 210 : 1928 Lah. 165, and it may be valid by custom. 34 A. 589, 10 P. R. 1919.

—a marriage during *iddat* period is invalid. 1 P. W. R. 1919 : 83 P. L. R. 1912, and under the Mohamedan Law there cannot be more than four wives. 1 P. R. 1875.

—when the accused raises the plea that the marriage was voidable at her option and that she exercised the option, he cannot succeed unless he proves the repudiation of the marriage before the abduction. 1928 Lah. 893 : 29 : Cr. L. J. 762 : 110 I. C. 794.

—where the woman is living with a man of her own accord and refuses to go back to her husband there is no "detention" 18 A. L. J. 311.

—"such woman" means not the woman so enticed away as mentioned in the sec. but such woman whom the accused knows or has reason to believe to be the wife of any other man. 10 A. 580, 16 P. R. 1891.

—before convicting the accused under s. 498 I. P. C. it must be established that the person accused knew or had reason to believe the person enticed away to be the wife of some other man. 1931 Lah. 194 : 1931 Cr. C. 314.

—the wife lives under the protection of her husband even during the temporary absence of the husband from his house but this protection must be known by the accused. 5 W. R. 50.

—sexual intercourse with another's wife during her husband's life-time is illicit intercourse within the meaning of the sec. 13 A. L. J. 251.

—under the Mohamedan Law remarriage of a married woman is only invalid and not void but as that woman does not become the wife of the person she remarries, any intercourse between the remarried woman and the person she remarries is illicit and as the intention of the person enticing away the woman is to remarry her the

S. 498. (enticing or taking away or detaining with Criminal intent a married woman)—*confd.*

Intent would, therefore, be that she would have illicit intercourse 1931 Lah. 194: 1931 Cr. C. 314.

—where the husband of a woman absolutely abandons her and she marries another man in a form recognised as valid among the people to which the parties belong, the second husband of the woman has full authority to institute complaint for enticing the woman away. 1931 All. 834: 1930 Cr. C. 1137.

—a person convicted under s. 497 need not be convicted under this sec. also 2 W. R. 35.

—an offence under this sec. is a minor offence as compared with an offence under s. 366. 20 C. 483, and see 29 C. 415, 31 B. 218, 27 M. 61, 38 A. 276, 5 A. 288, 82 P. R. 1910, 2 P. R. 1918

—a complaint for detaining a woman for the purpose of illicit intercourse can be enquired into only in the District where such detention occurs 51 P. L. R. 1918

—when the woman is a consenting party a light punishment should be inflicted. 20 P. W. R. 1914, 33 P. L. R. 1910.

—when the woman appears to be an active abettor in her own abduction the punishment should be light one. 27 Punj. L. R. 642: 99 I. C. 84. 28 Cr. L. J. 52: 1927 Lab 91

—it is not necessary to inflict a severe sentence on an accused person convicted under s. 498 I. P. C. when the husband did not care for the wife and took no action for a number of months against the accused after he was informed of the abduction. 26 P. L. R. 429, 91 I. C. 1008. 27 Cr. L. J. 192: 1926 Lab 176

—where the evidence on a charge of abduction showed that no complaint was made for some days after the event, no steps were taken to trace the woman and she herself behaved as if she acquiesced in the movements of her abductors, the case was one of elopement and not of abduction 7 Lah. L. J. 217: 90 I. C. 156: 1925 Lah. 406: 26 Cr. L. J. 1500,

—a criminal prosecution does not abate merely on account of the death of the injured party A husband filed a complaint against certain persons charging them with having abducted his wife. After the trial had come to an end and judgment was pronounced the

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—where the complaint was of the offence of kidnapping and theft of jewels and there was no allegation that the purpose was to have illicit intercourse, held a conviction under s. 498 was illegal. 45 M. L. J. 543: 74 I. C. 949: 24 Cr. L. J. 837: 1923 M. W. N. 876.

—it is clear that to constitute an offence under s. 498 it is not necessary that the woman should be physically restrained or that she be actively prevented from the exercise of her free will or action. 69 I. C. 458: 23 Cr. L. J. 730: 1923 Lah. 45.

S. 498. Charge.

—omission to state in the charge sheet that the accused has knowledge or reason to believe that the abducted woman was married does not by itself affect the conviction under s. 498. I. P. C. 101 I. O. 451 : 1927 Lah. 432 : 28 Cr. L. J. 419.

Ss. 499. (Defamation).**Scope of the section.**

—the offences of defamation in India depends on the construction of this sec. and not on the English law on the subject. 22 A. 234, 14 W. R. 27, 29 A. 685, 3 A. 814, 27 Cr. L. J. 253, 19 B. 340, 49 M. 728 F. B., 48 C. 388 F. B.

Words either spoken or intended to be read.

—the Indian Penal Code makes no distinction between written and spoken defamation. 2 W. R. (Cr) 36, 8 M. 175.

—where the words containing the imputation are in writing it is necessary that the maker of the imputation shall intend, that the words shall be read, that is, read by some person other than the person defamed, or, in other words, that they shall be made public, for the essence of the offence is the intention to harm reputation and that necessarily requires publicity to be given to the imputation. 7 A. 205 p. 222 F. B.

"By signs"

—It is not necessary that the accused himself should have uttered the defamatory words. It is sufficient that by his conduct and by what he said he showed that he assented to and adopted as his own the defamatory words uttered by another. 47 M. L. J. 746 : 20 L. W. 921 : 1925 Mad. 320 : 85 I. C. 361 : 26 Cr. L. J. 521.

"Publishes"

—to constitute the offence there must be publication to a stranger of the libel complained of. 38 M. L. T. 168 : 45 M. L. J. 754 : 1923 M. W. N. 913

matter only to the person
B., 7 O. W. N. 71, 6 N. W.
L. J. 639 : 83 I. C. 503 : 1924
communicated to some other

person. 1 Weir J.

—a communication to a husband or wife of a charge against the wife or husband is a publication. 4 O. L. J. 390.

—statements made in a memorial to Lieutenant-Governor and repeated before officers deputed to make an enquiry can be the subject of action for defamation. 13 A. L. J. 681 : 29 I. C. 322 : 16 Cr. L. J. 482.

—if A and B conspire to draw a document defaming C. and have it with one of them there is no publication. 1931 M. W. N. 366 : 131 I. C. 654.

S. 499. "Any Imputation concerning any person"

—an imputation ordinarily implies an accusation or something more than a mere expression of suspicion, but it is rather difficult to draw the line of distinction. An expression of suspicion against a person as to have stolen certain property may have the same effect on the mind of the person to whom the suspicion is communicated as an accusation would have. 96 I. C. 211 - 1926 Lab. 278: 27 Cr. L. J. 899.

—words which impute unworthiness to remain a member of a caste are defamatory. 33 M. 67. 17 M. L. T 869.

—It is immaterial whether the imputation is conveyed by feigned names because feigned names have been construed a libel upon those persons who were really meant to be libelled. 26 C. L. J. 345 : 44 I. C. 930 : 19 Cr. L. J. 402.

—the person whose conduct is called in question need not be described by name. It is sufficient if on the evidence it can be shown that the imputation was directed towards a particular person or persons who can be identified. 3 Pat. L. T. 209; 1 Pat. 414 1922 Pat. 101; 67 L. O. 609; 1922 Pat. 117 23 Cr. L. J. 433.

—an imputation, even if true, is not by itself good ground for making it. 5 C. P. L. R. Or 55

preparing
4 C 124.
business is
something

worse than either are defamatory 9A.420

—a mere shush is not ordinarily a defamation but if taken as a whole it harms the reputation of the complainant it is defamatory.
112 L. G. 772 : 30 Cr. L. J. 1.

—complainant's counsel cited an authority but could not find his book at the time of argument. Whereon the complainant asked his counsel to search for the book in the accused's books with the "..." might be mixed up with them. Accused resented the habit of stealing, like ... it was held that the he did not mean to call most akin to abuse, the

Lab. 234: 115 I. C. 72: 30 Cr L J. 379.

S. 499. "Any imputation concerning any person"—contd.

—if the description in the defamatory matter which applies by innuendo, shown to be of that class an action is
 387: 42 C. L. J. 178: 26

—when the imputation was against some two constables in a particular locality and there were four constables attached to the thana at that place and it could not be said that libel was against any one of them in particular or against all of them collectively, neither any one of the four nor all of them could say that they were the individuals aimed at and a complaint by them cannot stand.
 3 Pat. L. T. 209: 1 Pat. 414: 1922 Pat. 117: A. I. R. 1922 Pet. 101: 23 Cr. L. J. 433: 67 I. C. 609: 53 Pat. L. T. 209.

"Intending to harm will harm"

—it is not necessary to prove that the complainant actually suffered directly or indirectly from the scandalous imputation. It is sufficient that the accused intended to harm, or knew, or had reason to believe that the imputation would harm the reputation of the person against whom it was made. 28 C. 63, 6 N. W. P. 86, 22 Bom. L. R. 1224: 5 Bom. Cr. C. 257: 22 Cr. L. J. 58: 59 I. C. 202, 12 Cr. L. J. 129, 1 Weir 575.

. is defamatory.
 for conviction
 caused. 22 A.
 25, 27 Cr. L. J.

868, 9 I. C. 775: 4 Bur. L. T. 43: 12 Cr. L. J. 129.

—intention like any other psychological fact has to be inferred from the act itself. The jury has to see whether the natural result of the act is not to harm the reputation of the persons attacked.
 1. C. W. N. 465.

—intention to harm the reputation is not necessary, it is sufficient, if there was reason to believe that the imputation would harm the reputation. 34 P. W. R. 1913.

—the use of common abuses cannot be regarded conveying any such imputation as can in any way harm the reputation of the person. 3 A. W. N. 36, 8 A. W. N. 167, but if obscene and insulting words are used after the altercation is over, the person using such words would be guilty. 16 A. L. J. 498.

—the word "harm" should not be meant in its ordinary sense. It means imputation on a man's character made and expressed to others so as to lower him in their estimation and that anything which lowers him merely in his own estimation certainly does not constitute defamation. 7 A. 205 p. 220 F. B.

—where the accused sent to a public officer by post in a closed cover a notice under s. 424 of the Civil Procedure Code character of the recipient, held
 except to the policeman himself
 A man has no reputation to

"The reputation"

—a man's opinion of himself cannot be called his reputation.
7 A. 205 p. 221. F. B.

Explanation 1. To impute anything to a deceased person.

—the essence of the offence consists in its tendency to cause that description of pain which is felt by a person who knows himself to be the object of the unfavourable sentiments of his fellow creatures and the inconveniences to which a person who is the object of such unfavourable sentiments is exposed. 41 A. 311 p. 314.

—a prosecution is maintainable for the defamation of a deceased person but a suit for damages by the heir or nearest relative of the deceased person for defamatory words alleged to have caused damage to the piff. as a member of the same family is not maintainable. 5 B. 580.

Explanation 2. Imputation against company, association or collection of persons.

—Explanation 2 to s. 499 is intended to include a company or an association or collection of persons as such within the word 'person' used in the definition so that the latter should not be restricted to individuals. In this explanation the identity of the persons must be maintained and the imputation said to have been made of harming their reputation or the virtue of this explanation an imputation concerning an association of persons as such cannot justify a charge of defaming an individual. 29 C. W. N. 904. 90 I. C. 387; 42 C. L. J. 178; 26 Cr. L. J. 1539.

—it is doubtful if the police force at a particular place is such an association or collection of persons as is contemplated by this explanation. 29 C. W. N. 904; 90 I. C. 387; 42 C. L. J. 178; 26 Cr. L. J. 1539.

—an imputation against an association or collection of persons is not an offence under s. 499 unless it is an imputation of the nature of the offence of defaming a person. It is not an offence if it is an imputation of the nature of the offence of defaming a person. 3 Pat. L. T. 67 I. C. 609.

—where a newspaper article contained an imputation against the Hindu widows generally to the effect that "the country's widows to the number of nearly 30 millions were regarded as under God's curse sluts at home and prostitutes abroad", and the complainant preferred a complaint alleging that he was injured because of his widow relatives and the Magistrate and Sessions Judge held that the imputation was too wide to hurt any person and consequently dismissed the complaint, in revision the H. C. held that the complaint ought not to have been dismissed without giving the complainant an opportunity to substantiate the charge by admitting evidence and that consequently further inquiry should be directed. 55 C. 1280; 1929 Cal. 191; 115 I. C. 35; 30 Cr. L. J. 407.

Explanation 4. What imputation harms reputation ?

—the words "directly or indirectly" mean that the person defamed must either be abused in express terms, or the wording of the communication must convey such imputation as any person reading it must understand to impute misconduct or bad character. 7 A. 205 F. B. 9 A. 420

—it cannot be said that the person libelled should himself be the direct means of publishing the libel to others. 7 A. 205 p. 221 F. B.

—this explanation does not apply where the words used and forming the basis of a charge are *per se* defamatory. When an expression used verbally or in writing is doubtful as to its significance and some evidence is necessary to decide what the effect of that expression will be and whether it is calculated to harm a particular person's reputation, it is possible that the principle enounced in explanation 4 might and would with propriety be applied. 9 A. 420.

—but where at the time of a feast of the brother hood the accused declare that the complainant had been outcasted and was not one fit to sit down at the feast with other members of the brotherhood the accused was liable to be convicted under s. 499 I. P. C. and neither explanation 4 nor s. 95 I. P. C. applied to the case as the words used and forming the basis of the charge were *per se* defamatory. 26 A. L. J. 361: 1923 All. 213: 108 I. C. 690: 29 Cr. L. J. 451, 9 All. 420, *Rel.*

—if individuals are not named in the libel nor are they specifically described but they are so described that they are known to all their neighbours as being the parties alluded to and if they are able to prove to the satisfaction of a jury that the party writing the libel did intend to allude to them, it would be unfortunate to find the law in a state which would prevent the party being protected against such libels. 1 C. W. N. 465

—where the accused made a report at the police station that some property had been stolen and that he suspected the complainant and two others and the complainant prosecuted the accused for defamation in respect of that report and the accused was fined, held (1) that an imputation ordinarily implies an accusation or something more than mere expression of a suspicion; (2) it is rather difficult to draw the line. An expression of suspicion may have the same effect on the mind of the person to whom the suspicion is communicated as an accusation would have. 27 Punj. L. R. 171: 8 Lah. L. J. 97: 96 I. C. 211: 27 Cr. L. J. 899: 1926 Lah. 278.

—where the accused wrote a book in reply to a book written by the complainant dealing with highly controversial religious matters, and in expressing his opinion used violent expressions, held that expressions taken along with the context cannot be considered defamatory, the personal character or respectability of the complainant not being attacked, he being accused of controversial dishonesty. 1924 M. W. N. 768: 47 M. L. J. 664: 1924 Mad. 898.

S. 499. Explanation 4. What imputation harms reputation?

—an imputation that a Mahomedan had killed a cow in his compound is not one which can be said to harm his reputation. 5 C. P. L. R. (Cr) 53.

—sec. 93 I. P. C. applies to a case where the words alleged as defamatory are such that it should not be taken seriously. 43 A. 497. 63 I. C. 875: 19 A. L. J. 425.

—where the complainant was invited to a feast in the house of the accused and the latter asked the complainant to leave the place of dinner, held that although such conduct on the part of the accused was reprehensible from the social point of view it was not an offence under s. 500 I. P. C. as no imputation was made against the reputation of the complainant. 1936 All 711: 6 Cr. R. 278: 24 A. L. J. 893

—but where the accused called the complainant a *Kori Chamar* while he was *Parsulla Kaistha* with the result that none of the priests attended the religious ceremony in the house of the complainant, the accused were guilty of defamation. 11 Cr. L. J. 413.

—also where the complainant was described as a man with whom not even Turks, let alone Brahmins, could associate and the wedding of his daughter was characterised as a sinful carnival worthy of perdition—a moral crime involving disgrace degradation and degeneration it was held that the language used was unresstrained the object of the writer being to hold the complainant up to public execration. 9 I. C. 775: 4 Bur. L. T. 48: 12 Cr. L. J. 129.

—a statement that a person is excommunicated from the caste is defamatory and the fact that all Mahomedans are generally speaking of one caste does not make it any the less defamatory. 99 I. C. 943: 28 Cr. L. J. 207: 1927 Mad. 397

Exception 1. Imputation of truth which public good requires to be made.

—to entitle a person to the benefit of this exception the statements must not only be proved to be true but it must be shown that their publication was for the public good. Public good is the good of the general public as contra-distinguished from that of an individual. The denouncing of a Brahmin for providing alcoholic refreshment at a wedding reception for those of his guests who desired to partake of such beverages, is not "for the public good." 12 Cr. L. J. 129: 2 I. C. 775: 4 Bur. L. T. 48.

—where a false and defamatory imputation was published by the accused and the imputation was based on very flimsy materials

S. 499. Publication of defamatory matter in newspapers—
contd.

—there is a distinction between "fair comment" based on well known or admitted facts and the assertion of unsubstantial facts for comment. Where comments are made on allegations of facts which do not exist, the very foundation of the plea disappears. A wilful misrepresentation or any misstatement of fact the truth of which an editor could have discovered on proper inquiries cannot support the plea "of fair comment" as an editor must make due inquiries as to its truth before disseminating the statement of those facts. 23 S. L. R. 216: 1923 Sind 90. 116 I. C. 99: 30 Cr. L. J. 548.

—"fair comment" is not an expression used in any of the exceptions to the section. It may however be taken to convey the same idea which the expression "to express in good faith any opinion" in exceptions 2, 3, 5, and 6 of the section is meant to convey. 9 Mys. L. J. 120.

—an editor should be most watchful not to publish defamatory attacks upon individuals unless he first takes reasonable pains to ascertain that there are strong and cogent grounds for believing the information, which is sent to him, to be true. 26 A. L. J. 509: 1928 All. 321: 10 A. I. Cr. R. 145.

—publication of a defamatory "rumour" is as actionable as if the statement were published without qualification and it is no defence to a civil suit or criminal prosecution that the person who published the libel or slander did not believe it; but he had no intention of harming another, nor is it a person publishing . . .
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letter published in h . . .
26 A. L. J. 509 1928 . . .

—It is no part of the journalist's duty to publish every foul rumour that he reported to him. Where the truth can be elucidated by a few inquiries he ought to do so. 3 Pat. L. T. 209: 1 Pat. 414: 1922 Pat. 117: 1922 Pat. 101: 23 Cr. L. J. 433: 67 I. C. 609.

—when the accused, an editor of a newspaper published defamatory matters under the guise of rumours and did not express regret, further aggravated the offence by writing a letter, he should be severely sentenced. 26 A. L. J. 509: 1928 All. 321 117 I. C. 356: 30 Cr. L. J. 766.

—where the editor of a newspaper published a defamatory article imputing indecency and habitual drunkenness to a person holding high offices and when the latter called on the editor to apologize he pleaded justification by truth but the same was not established in the trial, he was guilty under s. 500 I. P. C., 26 A. L. J. 196: 1928 All. 222-115 I. C. 872: 30 Cr. L. J. 530.

—sending of a newspaper containing a defamatory matter to a subscriber at Allahabad is publication at Allahabad. 3 A. 342. 22 B. 112, 5 W. R. 44 15 B. 286.

S. 499. Exception 2. Expression in good faith of opinion respecting conduct of public servant.

—the expression "opinions in good faith" means that in order to express an opinion in good faith the person who holds it must have taken care and attention in forming it, 26 C. L. J. 401: 45 I. C. 113: 19 Cr. L. J. 449, the mere absence of ill-will is not sufficient. 1 Weir 613.

—in a case where the accused was put on his trial for a defamatory statement contained in a petition to the Magistrate it was held that in dealing with the question of good faith the proper point to be decided was not whether the allegation put forward by the accused in support of the defamation were in substance true but whether he was informed and had good reason, after due care and attention, to believe that such allegation was true 4 C. 124

—if a person undertakes to criticise the acts of a public man he must take care not to assert anything untrue as the basis of criticism and he is bound not to conceal wilfully anything which would show that the criticism is not well-founded. 26 C. L. J. 345: 44 I. C. 930: 19 Cr. L. J. 402.

—an expression of opinion in good faith is a criticism and any fair criticism is justifiable and is not a contempt, if expressed in good faith. 26 C. L. J. 401: 45 I. C. 113: 19 Cr. L. J. 449.

—false statements published in newspapers are not fair criticism. If anonymous letters are sent to the press containing false statements the press is responsible for them if the name of the author is not given up. 26 C. L. J. 401: 45 I. C. 113: 19 Cr. L. J. 449.

—no one has right of appeal to the press by bringing false accusation founded on wilful misstatements. 26 C. L. J. 401: 45 I. C. 113: 19 Cr. L. J. 449.

—every subject has a right to comment on those acts of the public men which concern him as a subject of the realm if he does not make his comment a cloak for malice and slander. A writer in a public paper has the same right as any other person. Where a person makes the public conduct of a public man the subject of comment and it is for the public good, he is not liable to an action if the comments are made honestly, and he honestly believes the facts to be as he states them and there is no wilful misrepresentation of fact or any misstatement which he must have known to be a misstatement if he had exercised ordinary care. 1 B. H. C. App. 85, 3 A. 815.

—where the accused, an editor of a newspaper published an article in which he made certain remarks as to the complainant's antecedent referring to a criminal proceeding against him but which was subsequently withdrawn, it was held that the statement made by the accused did not contain the truth but only half-truth and it was not for public good that an imputation should be conveyed by a statement which was misleading because it was incomplete. 4 B. 298.

S. 499. Exception 3. Expression in good faith of opinion respecting conduct of person touching any public question

—a fair comment must be based upon facts and a person cannot invent facts and express his opinions upon such invented facts. The conduct of a public man or of a man in his public character cannot be assailed as dishonest, simply because the writer fancies that such conduct is open to suspicion. 19 Cr. L. J. 129; 43 I. C. 417 (Rang)

—the moment an allegation is shown to be based upon a misstatement of facts it is impossible to justify it on the ground of fair comments. 93 I. C. 431; 1927 All 116; 27 Cr. L. J. 1361.

—where the complainant, a medical man solicited the public by an advertisement to subscribe to a hospital of which he was the surgeon in charge stating the number of successful operations performed by him and the accused who was the editor of a medical journal made a criticism of the advertisement, it was held that the accused was protected under third, sixth and ninth exceptions in as much as the advertisement had the effect of making the hospital a "public question" and submitting it to the "judgment of the public" and the accused expressed himself in good faith. 3 A. 342.

—in discussing the claims of a person for Municipal office as councillor one is entitled to make remarks in the interests of the public, so long as he abstained from aspersing the private character of the former. 1914 M. W. N. 331; 15 Cr. L. J. 357 23 I. C. 725

—where the accused, a Municipal Councillor published in a newspaper a letter giving what purported to be a verbatim account of an incident, that took place in a meeting of the Municipality and on the complainant's own admission the report was found to be substantially true, held that the occasion was privileged and the accused was protected under this exception 8 S. L. R. A. 143; 16 Cr. L. J. 141 27 I. C. 205

—where a matter is of public interest the court ought not to weigh any comment on it in a fine scale; some allowance must be made for even intemperate language, provided however, that the writer keeps himself within the bound of substantial proof and does not misrepresent or suppress any fact 13 Bom. L. R. 1187; 12 Cr. L. J. 595. 12 I. C. 971.

—a line must be drawn between hostile criticism on a man's public conduct and the motives by which that conduct may be supposed to have been influenced; there is no right to impute to a man in his conduct as a citizen, even though it be open to disapprobation, any base, sordid, dishonest or wicked motive without any just cause for any such imputation. Any mistaken belief in the existence of any such motive is no justification and will be no defence to a charge of defamation. 76 I. C. 230.

S. 499. Exception 3. Expression in good faith of opinion respecting conduct of person touching any public question—contd.

—when the imputation is made in good faith for the protection of the social and spiritual interests of the community it is exempted. 22 O. 46, Rat. Un. Cr. 387.

—the onus is on the accused to prove that he is within exception 3 to sec. 499 if he relies on it. 17 S. L. R. 245: 1924 S. 129: 76 I. C 230: 25 Cr. L. J 134

Exception 4. Publication of true report of proceedings of courts.

—where the accused, a trustee of a temple was charged for a statement in connection with an appointment in the temple that the complainant who used to perform worship in a temple had been convicted and sent to jail for the theft of idol, it was held that the statement was true and the alleged defamatory statement was no more than the publication of the results of proceedings in a court of justice which is specially declared to be no defamation by Exception 4 to sec. 499 I. P. C 26 M. 464.

Exception 5. Expression in good faith of opinion respecting merits of case decided in court or conduct of witnesses and others concerned.

—when immediately after the termination of the proceedings under s. 506 I. P. C. the accused, in answer to a query of his pleader as to the origin of the dispute which had led to the sec. 506 case, stated that the real cause of the dispute was that at some caste-feast, there had been some quarrel between parties owing to the accused's party having said that complainant's daughter-in-law had eloped with some body, held that the statement made by the accused did not come within the definition of defamation in s. 499 I. P. C. because he did not make any imputation with the intention of harming the reputation of any body. He made it clearly in answer to a very natural question put to him by his legal adviser at a time when the relationship of legal adviser and client cannot be said to have ceased. 13 C. W. N. 1087. 1 Cr. O. L. 44.

Exception 6. Expression in good faith of opinion respecting merits of public performance.

—whether fair comment is to be regarded as falling under a branch of the law of privilege or not, it cannot excuse an injury arising not from the mere act of criticism but from a state of mind in the critic which is in itself unjustifiable, and the excuse may be so forfeited either by reason of an evil intent in him or by reason of mere recklessness in making unwarrantable assertion. For then the comment would not be fair comment at all. This clearly follows from the language of the exception to s. 499 I. P. C. which by requiring the "good faith" defined in s. 52 I. P. C. includes all that is done without due care and attention as well as that done with injurious intention. The right of fair comment involves

S. 499. Exception 6. Expression in good faith of opinion respecting merits of public performance—confd.

two essentials, first that the imputation should be comment on the work criticised and second that it should be fair, that is to say, if it professes to be an inference drawn from the contents of that work, it must be an inference which it is possible to draw therefrom. 31 B 293; 9 Bom. L. R. 230.

—“good faith” requires not logical infallibility but due care and attention. But how far erroneous actions and statements are to be imported to want of due care and caution must in each case be considered with reference to the general circumstances and the capacity and intelligence of the person whose conduct is in question. It is only to be expected that the honest conclusions of a calm and philosophical mind may differ very largely from the honest conclusions of a person excited by sectarian zeal and untrained to habits of precise reasoning. 31 B. 293 9 Bom. L. R. 230.

Exception 7. Censure passed in good faith by person having lawful authority over another.

—caste associations are autonomous, the powers vested in their constituted heads being, subject to any special custom, those necessary for the protection of the interests committed to their charge. The court's only duty is to see that these powers are exercised in accordance with the principles of natural justice, that is, in the majority of cases, after the person to be affected by their exercise has been heard and his defence has received fair consideration. Where a Swami, the head of a caste issued a temporary interdict against two members of his caste on the ground that they broke the caste rules by interdining with Panohmas and the interdict was issued *ex-parte* in view of the apprehension that they might take part in temple feasts coming off immediately and there was nothing to show that the Swami was not going to follow up the temporary interdict with his final decision after hearing the persons affected, he would be protected by exception 7 to s. 499 I. P. C. 45 M. L. J 116 24 Cr. L. J. 325. 17 L. W. 500: 1923 Mad. 587; 72 I. C. 165

—where the *guru* of a caste issued a letter to his disciples forbidding them to have any sort of social intercourse with the complainant or his wife on the ground of the latter's intrigue with a man of lower caste, it was held as the statement contained in the letter issued by the accused was made in good faith for the protection of the social and spiritual interest of the community the case came within the Exceptions 7 and 9 of s. 499 I. P. C. 22 C. 46, 6 M. 381 *fol* Sama viewa were taken in 24 B. 13, 45 M. L. J. 116; 24 Cr. L. J. 325; 72 I. C. 165; 1923 Mad. 587 and unrep. Cr. C. 387.

—but where the *Guru* published a notice declaring the complainant to be an outcaste and sent by post a registered post card of similar purport to the complainant it was held that the mode of publication adopted by the accused vitiated the privilege and indicated a conscious disregard of the complainant's legal right

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S. 499. Exception 7. Censure passed in good faith by person having lawful authority over another—contd

and therefore the legal malice had been made out and the deft. was guilty of defamation. 6 M. 381, 15 M. 214 *Ref.*

See other cases on this point under exception 9

Exception 8. Accusation preferred in good faith to person having lawful authority.

—the liability to prosecution for defamation must always be determined with reference to section 499 I. P. C. The exceptions 8 and 9 to sec. 499 I. P. C. do not formulate any rule of absolute privilege. The eighth exception refers to accusation preferred in good faith to an authorised person. To take a case out of the primary rule and to bring it within either of the exceptions good faith on the part of the person who makes or publishes the imputation must be established. 48 C. 388 : 24 C. W. N. 982 : 32 Cr. L. J. 94 : 59 I. C. 143 : 29 Cr. L. J. 31 F. B.

—the English Common Law doctrine of absolute interest is not the law in India (23 M. L. J. 39 : 13 Cr. L. J. 275 *Diss. from*). The Penal Code declares the law in respect of defamation. It must be regarded :
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wrong to assume that in introducing a foreign law into a country the Legislature intended to introduce the whole of it unless the contrary is expressly stated. It is the essence of the Code to be exhaustive on the matters in respect of which it declares the law and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. (29 C. 707 : 6 C. W. N. 825 *fol.*) 17 C. W. N. 297.

—that the English Rule of absolute privilege does not apply *proprio vigore* in India is apparent from the proviso to s. 133 Evl. Act. 5 S. L. R. 133 : 13 I. C. 217 : 13 Cr. L. J. 25, (22 A. 234, 29 A. 685) *fol.* 23 C. 563 *Ref.*

—the Bombay H. C. in 19 B. 707 and 17 B. 127 has taken different view favouring the doctrine of "absolute privilege". But the Allahabad H. C. has followed the Calcutta H. C. in 29 A. 685 F. B. Also a Full Bench of the Madras H. C. which formerly favoured the principle of "absolute privilege" in 36 M. 216 and 37 M. 112 has overruled these decisions and has held that the defamatory statement made in a complaint filed before a M. is not absolutely privileged because Exception 8 to s. 499 which is the only exception applicable to the case expressly lays down that the accusation against others are privileged when they are made in good faith. The exceptions to the section define the privileges exhaustively and recourse cannot be had to the English Common Law to add new ground of exceptions. 49 M. 728 : 96 I. C. 978 : 27 Cr. L. J. 1026 : 1926 M. W. N. 606 : 1926 Mad. 906 F. B., (36 M. 216 F. B. and 37 M. 110) *overruled*.

6.499. Exception 8. Accusation preferred in good faith to person having lawful authority—*contd.*

—a statement made by a villager casting imputation on the character of a co-villager in a complaint to the higher authorities is privileged only if the imputation is substantially true and made in good faith. 15 Cr. L. J. 281 : 23 I. C. 489 : 1 L. W. 239.

—a petition to the President however malicious that a certain person was suffering from leprosy and therefore was disqualified for election as a member of the Local Board under s. 55 of the Madras Local Boards Act, does not amount to defamation. 1931 M. W. N. 366 : 131 I. C. 654.

—a defamatory statement made without express malice and with a *bona fide* belief in its truth against one whose conduct in the respect defamed has caused the accused any injury, to one whose duty it is to inquire into and redress such inquiry falls within this exception. It is not necessary for the accused to show that the imputations are true in fact. He has only to show that he acted with due care and attention. 9 Bur. L. T. 136 8 L. B. R. 440 : 34 I. C. 325 : 17 Cr. L. J. 213.

—the two ingredients to be established under eighth exception are the preferring of a complaint in good faith and preferring it to a person who has authority over the person complained against. These ingredients should be affirmatively established by the person who wants to bring himself within that exception and that is what sec. 105 of the Evl. Act lays down. 17 Cr. L. J. 381 : 35 I. C. 813.

—to bring the case within this exception the accusation must be preferred in good faith that is to say with such reasonable care and attention in first satisfying the accused himself of the truth and justice of his charge as an ordinary man should be expected to exercise. 6 A. 220, 1 Weir 607, 1 Weir 608

which attaches to communications made in the fulfilment of a duty *bona fide*, or to use our own equivalent honesty of purpose is essential and to this again two things are necessary, first, that the communication be made not only in the course of duty, that is on the occasion which would justify the making of it but also from a sense of duty. Secondly that it be made with a belief in its truth. 11 C. W. N. 390.

—where the accused, an assistant Yard Master in the Railway told his friend and subsequently at the instance of the latter wrote to the superior officer of the complainant to this effect that the complainant and the wife of the accused's friend were closetted together on a certain night in the first class compartment of certain carriage standing on the line and had been seen behaving in such a manner as to lead to the conclusion that acts of immorality took place between them and it was found that the accused honestly believed in the truth of the statements and ma

S. 499. Exception 7. Censure passed in good faith by person having lawful authority over another—contd

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wrong to assume that in introducing a foreign law into a country the Legislature intended to introduce the whole of it unless the contrary is expressly stated. It is the essence of the Code to be exhaustive on the matters in respect of which it declares the law and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. (29 C. 707; 6 C. W. N. 825 fol.) 17 C. W. N. 297.

—that the English Rule of absolute privilege does not apply *proprio vigore* in India is apparent from the proviso to s. 132 Evi. Act. 5 S. L. R. 133; 13 I. C. 217; 13 Cr. L. J. 25, (22 A. 234, 29 A. 685) fol. 23 C. 563 Ref.

—the Bombay H. C. in 19 B. 707 and 17 B. 127 has taken different view favouring the doctrine of "absolute privilege". But the Allahabad H. C. has followed the Calcutta H. C. in 29 A. 685 F. B. Also a Full Bench of the Madras H. C. which formerly favoured the principle of "absolute privilege" in 36 M. 216 and 37 M. 112 has overruled these decisions and has held that the defamatory statement

S. 499. Exception 8. Accusation preferred in good faith to person having lawful authority—*confd.*

—a statement made by a villager casting imputation on the character of a co-villager in a complaint to the higher authorities is privileged only if the imputation is substantially true and made in good faith. 15 Cr. L. J. 231 : 23 I. C. 489 : 1 L. W. 239.

—a petition to the President however malicious that a certain person was suffering from leprosy and therefore was disqualified for election as a member of the Local Board under s. 55 of the Madras Local Boards Act, does not amount to defamation. 1931 M. W. N. 366 : 131 I. C. 654.

—a defamatory statement made without express malice and with a *bona fide* belief in its truth against one whose conduct in the respect defamed has caused the accused any injury, to one whose duty it is to inquire into and redress such inquiry falls within this exception. It is not necessary for the accused to show that the imputations are true in fact. He has only to show that he acted with due care and attention. 9 Bur. L. T. 136 : 8 L. B. R. 440 : 34 I. C. 325 : 17 Cr. L. J. 213.

—the two ingredients to be established under eighth exception are the preferring of a complaint in good faith and preferring it to a person who has authority over the person complained against. These ingredients should be affirmatively established by the person who wants to bring himself within that exception and that is what sec. 105 of the Evl. Act lays down. 17 Cr. L. J. 381 : 35 I. C. 813.

—to bring the case within this exception the accusation must be preferred in good faith that is to say with such reasonable care and belief in its truth that a person in such a position should be expected to

—in determining the good faith of the accused it is material to consider who he was and whether he had any concern in the matter complained of which would justify him in making the statements.

—to entitle matter otherwise libellous to the protection which attaches to communications made in the fulfilment of a duty *bona fide*, or to use our own equivalent honesty of purpose is essential and to this again two things are necessary, first, that the communication be made not only in the course of duty, that is on the occasion which would justify the making of it but also from a sense of duty. Secondly that it be made with a belief in its truth. 11 C. W. N. 390

—where the accused, an assistant Yard Master in the Railway told his friend and subsequently at the instance of the latter wrote to the superior officer of the complainant to this effect that the complainant and the wife of the accused's friend were closetted together on a certain night in the first class compartment of certain carriage standing on the line and had been seen behaving in such a manner as to lead to the conclusion that acts of impropriety took place between them and it was found that the accused honestly believed in the truth of the statements and made

S. 499. Exception 7: Censure passed in good faith by person having lawful authority over another—contd

and therefore the legal malice had been made out and the deft. was guilty of defamation. 6 M. 381, 15 M. 214 Ref.

See other cases on this point under exception 9

Exception 8. Accusation preferred in good faith to person having lawful authority.

—the liability to prosecution for defamation must always be determined with reference to section 499 I. P. C. The exceptions 8 and 9 to sec. 499 I. P. C. do not formulate any rule of absolute privilege. The eighth exception refers to accusation preferred in good faith to an authorised person. To take a case out of the primary rule and to bring it within either of the exceptions good faith on the part of the person who makes or publishes the imputation must be established. 48 C. 388; 24 C. W. N. 982; 32 Cr. L. J. 94; 59 I. C. 143; 29 Cr. L. J. 31 F.B.

—the English Common Law doctrine of absolute interest is not the law in India (23 M. L. J. 39; 13 Cr. L. J. 275 Diss. from). The Penal Code declares the law in respect of defamation. It must be

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existing law the Legislature intended to leave it unaltered unless that intention is expressly stated. It would be more and not less wrong to assume that in introducing a foreign law into a country the Legislature intended to introduce the whole of it unless the contrary is expressly stated. It is the essence of the Code to be exhaustive on the matters in respect of which it declares the law and it is not the province of a Judge to disregard or go outside the letter of the enactment according to its true construction. (29 C. 707; 6 C. W. N. 825 *fol.*) 17 C. W. N. 297.

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—the Bombay H. C. in 19 B. 707 and 17 B. 127 has taken different view favouring the doctrine of "absolute privilege". But the Allahabad H. C. has followed the Calcutta H. C. in 29 A. 685 F. B. Also a Full Bench of the Madras H. C. which formerly favoured the principle of "absolute privilege" in 36 M. 216 and 37 M. 112 has overruled these decisions and has held that the defamatory statement

5.499. Exception B. Accusation proffered in good faith to person having lawful authority—confd.

—a statement made by a villager casting imputation on the
... to the higher authorities
... substantially true and made
... C. 482: 1 L. W. 239.

certain person was suffering from leprosy and therefore was disqualified for election as a member of the Madras Local Boards Act, 1931 M. W. N. 366 : 131 I. C. 654.

—a defamatory statement made without express malice and with a bona fide belief in its truth against one whose conduct in the respect defamed has caused the accused any injury, to one whose duty it is to inquire into and redress such injury falls within this exception. It is not necessary for the accused to show that the imputations are true in fact. He has only to show that he acted with due care and attention. 9 Bur L. T. 136: 8 L. B. R. 440: 34 I. C. 325: 17 Cr. L. J. 213.

—the two ingredients to be established under eighth exception are the preferring of a complaint in good faith and preferring it to a person who has authority over the person complained against. These ingredients should be affirmatively established by the person who wants to bring himself within that exception and that is what sec 105 of the Ev. Act lays down. 17 Cr. L. J 381 : 35 I. Q. 813

—to bring the case within this exception the accusation must be preferred in good faith that is to say with such reasonable care and attention in first satisfying the accused himself of the truth and justice of his charge as an ordinary man should be expected to exercise. 6 A. 220. 1 Weir 607. 1 Weir 608.

—In determining the good faith of the accused it is material to consider who he was and whether he had any concern in the matter complained of which would justify him in making the statements.

—to entitle matter otherwise libellous to the protection which attaches to communications made in the fulfilment of a duty *bona fide*, or to use our own equivalent honesty of purpose is essential and to this again two things are necessary, first, that the communication be made not only in the course of duty, that is on the occasion which would justify the making of it but also from a sense of duty. Secondly that it be made with a belief in its truth.

—where the accused, an assistant Yard Master in the Railway told his friend and subsequently of the instance of the latter wrote to the superior officer of the complaint to this effect: that the complainant and the wife of the accused's friend were closetted together on a certain night in the first class compartment of certain carriage standing on the line and had been seen behaving in such a manner as to lead to the conclusion that acts of impropriety took place between them and it was found that the accused honestly believed in the truth of the statements and had

S. 499. Exception B. Accusation preferred in good faith to person having lawful authority—*contd.*

them under a sense of duty, held that the accused could not be convicted as no express malice was proved. 11 C. W. N. 390

—parties before the court, counsel and witnesses are all absolutely privileged, but that principle cannot be extended to the case of a complaint to a constable. 17 Cr. L. J. 381; 36 I. C. 813.

—where the creditors of a person who had made an application to declare him an insolvent suspected that the complainant was carrying away the properties given by the debtors and made a charge of theft or of having stolen property against the complainant to the police, held that the imputation was not made in good faith within the meaning of exception 8 or 9. 8 S. L. R. 55; 25 I. C. 1003; 16 Cr. L. J. 675.

Exception 9. Imputation made in good faith for protecting own or other's interests.

Scope of exception 9.

—this exception is based on the principle that honest transactions of business and of social intercourse would otherwise be deprived of the protection which they should enjoy. 12 M. 374

—exception nine does not formulate any rule of absolute privilege, good faith on the part of accused must be established. 32 C. L. J. 94; 24 C. W. N. 982; 48 C. 388; 59 I. C. 143 29 Cr. L. J. 31 F. B.; 49 M. 728; 1926 Mad 906; 96 I. C. 978. 1926 M. W. N 606 27 Cr. L. J. 1026 F. B

—the Rules of the Common Law of England apply to questions of civil liability for defamation in India but does not apply to criminal liability which is determined exclusively by the Indian Penal Code. 7 Pat. L. T. 587; 1926 Pat. 425, 92 I. C. 429; 27 Cr. L. J. 253 1926 All 287; 24 A. L. J. 329, 1925 Rang. 345; 4 Bur. L. J. 147, 105 I. C. 820; 28 Cr. L. J. 996; 1928 Nag. 58.

—there is no absolute privilege in respect of statements made in court. The accused must show that the imputations were made in good faith and for his own protection. This is a matter of evidence. 35 C. L. J. 527; 1922 Cal 76; 69 I. C. 269; 23 Cr. L. J. 685.

—imputation made *bona-fide* to protect accused's own interests is privileged under exception 9. 20 L. W. 779, 3 W. R. (Cr.) 45.

—exception 9 to sec 499 I. P. C. can only afford protection when the defamatory statement has been made in good faith for the protection of the interests of the person making it or of any

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S. 499. Exception 9. Imputation made in good faith for protecting own or other's interests—contd.

—where the accused made charges of homicidal intent and immorality against his sister-in-law and pleaded exception 9 in defence, and violent conduct of the complainant was proved but her immorality was not established held that the accused was protected by the exception as regards the first charge but he was guilty of the second charge, the onus in such cases resting on the accused to prove the exception. 51 A. 313; 26 A. L. J. 1334; 1929 All. 1; 113 I. C. 213; 30 Cr. L. J. 401.

—charges of corruption and conspiracy against a Magistrate are grossly libellous and the accused, a journalist cannot justify them in a criminal proceeding for defamation unless he was able to establish affirmatively that he believed them to be true and that on reasonable grounds as provided in this exception. 18 C. W. N. 785; 41 C. 1028; 20 C. L. J. 161; 15 Cr. L. J. 309; 23 I. C. 661; 26 M. L. J. 621; 16 M. L. T. 79; 1914 M. W. N. 506; 12 A. L. J. 1042; 16 Bom. L. R. 544; 7 Bur. L. T. 167 P. C.

—statement made in good faith in order to explain a charge against the accused is protected by Exceptions 8 and 9. In this case the accused was charged by the Panchayat with having beaten the complainant and stated that the complainant was under his keeping for 10 years, held that the statement was made in good faith in order to explain his relation with the woman to account for the beating. 1926 Nag. 504; 96 I. C. 394; 27 Cr. L. J. 938.

—in this country the question of civil liability for damages for defamation and questions of liability to criminal prosecution, do not, for the purpose of adjudication, stand on the same footing. 48 C. 388; 32 C. L. J. 94; 24 C. W. N. 982, F. B.

—where express malice is absent the Court should not deprive a pleader of the protection of this exception because in considering whether there was good faith, that is, due care and attention, the position of the person making the imputation must be considered. 19 B. 340, 4 W. R. (Cr.) 22.

—absence of good faith may be proved by the flimsy materials on which the statement was based and the absence of any evidence that the accused made any inquiry before publication. 28 C. W. N. 579; 83 I. C. 631; 1924 Cal. 64.

—in the absence of good faith it was not necessary to enquire if the public good was involved in the publication. 28 C. W. N. 579; 83 I. C. 631; 1924 Cal. 64.

—the terms "pichlag" and "lowaris" do not mean an illegitimate bid and are not defamatory. In a contest relating to an election to disqualify the rival candidate.
9 to sec 499. 67 I. C. 589; 23 Cr.

Privilege to the profession of the Press.

—no privilege attaches to the profession of the Press as distinguished from the members of the public. The freedom of the journalist is an ordinary part of the freedom of the subject and to

S. 499. Exception 9. Imputation made in good faith for protecting own or other's interests—contd.

whatever lengths the subject in general may go, so also may the journalist: but apart from statute law his privilege is no other and no higher. 18 C. W. N. 785: 20 C. L. J. 161: 15 Cr. L. J. 309: 23 I. C. 661: 41 C. 1023: 7 Bom. L. T. 167: 1914 M. W. N. 506: 12 A. L. J. 1042: 16 M. L. T. 79: 26 M. L. J. 621: 16 Bom. L. R. 544 P. C

For other cases on this point, see notes under the heading "Publication of defamatory matter in news papers"

Imputation made by a member of a caste.

is made inquiry directed, where the accused having suspected that complainants were given to drinking liquor made an application to the caste calling for an inquiry into their conduct, it was held that the communication was made in good faith it was not communicated

13 Cr. L. J. 687: 16 I. C. 330.

—where the complainant was invited to a feast in the house of the accused and the latter asked the complainant to leave the point of view it was not imputation was made against
6 All. 711: 6 Cr. R. 278:

—where the accused by words used simply expressed his unwillingness to utilise his services by shown by his dining persons who have dined had lost caste etc., no
17 M. L. T. 359: 28

M. L. J. 58: 26 I. C. 460.

—It is defamatory to say without cause that one is excommunicated. 1927 Mad. 397: 99 I. C. 943: 25 Cr. L. J. 357: 28 Cr. L. J. 207.

—where at a caste meeting the accused stated that the complainant's wife had been married before to a particular person, on proof of this allegation being false the accused were liable to be punished under s. 500 I. P. C. because one of the results of such allegation would be the excommunication of the complainant. 34 C. W. N. 530: 1930 Cr. C. 1206: 1930 Cal. 645: 127 I. C. 353: 31 Cr. L. J. 1225

S. 499. Exception 9. Imputation made in good faith for protecting own or other's interests—*confd.*

—the accused were the executive members of a caste association known as the Sourasbtra Sabha. There was a representation made to the Sabha that the complainant who was subject to the jurisdiction of the Sabha was liable to be excommunicated for a caste offence. Usual notice was given to the complainant to appear and on his refusal to do so he was excommunicated and in accordance with usual practice a report was drawn up and published in other places. In a charge of defamation it was held (1) that the accused having followed the usual procedure of the Sabha they could not be said to have been actuated by malice, however defective that procedure might appear to move judicial minds; (2) that the accused acted in good faith and in the interests of the community; (3) that the publication of the report was made in the usual course of the accused's duty to them who had a right to be acquainted with the matter in question; and (4) that the accused were fully protected by exception 9 to s. 499 I. P. C. 1924 Mad 670. 47 M. L. J. 8; 1924 M. W. N. 541; 19 L. W. 639.

—where the accused made a statement at a caste Panchayat that a child was born to a woman of adulterous intercourse, it amounts to defamation unless he proves that it was true and he made it in good faith. 76 I. C. 393; 25 Cr. L. J. 168; 1924 Neg 172.

—circulation of letters of excommunication as the result of the decision of a caste panchayat alleging illegal intercourse of the complainant with a woman is defamatory. 3 A. 667.

—where the complainant a member of a *Bhury* caste joined a procession in which there were some sweepers and shook hands with them and the accused who were members of the complainant's caste told some members of his caste that if they associated with the complainant they would refuse to smoke or drink with them as the complainant had become sweeper by shaking hands, held that as there was no panchayat held and no decision arrived at by it the statements were not privileged and the accused were guilty of defamation but the statements might have been privileged if a panchayat of the caste had been held to discuss the matter and the decision thereof communicated to the persons interested therein. 24 A. L. J. 171; 1926 All 306; 92 I. C. 584. 27 Cr. L. J. 296.

—where a caste leader signed a vernacular document containing an innocent statement of what had passed at a caste meeting to the effect that certain honors were not to be accorded to the complainant and that the latter had been excommunicated, there was no case of defamation. 1931 M. W. N. 407.

—the mere statement in caste meetings about the inferiority of another caste and the fact of procuring the village servants to refuse their services to that caste, however actionable in damages, does not come under s. 499. 1 Weir 575.

—the term "*Kulabhrashta*" *se.*, the son of a prostitute, used in a book is *prima facie* defamatory and does not fall under s.

S. 499. Exception 9. Imputation made in good faith for protecting own or other's interests—*contd.*

95 I. P. C. and whether it refers to a particular individual is a question to be determined by evidence. 2 M. W. N. 8; 12 I. C. 217; 10 M. L. T. 96; 12 Cr. L. J. 497; Section 95 I. P. C. applies to a case where the words alleged as defamatory are such that it should not be taken seriously. 43 A. 497; 63 I. C. 875; 19 A. L. J. 425.

—the fact that all Mahamedans are, generally speaking, of one caste does not make it any the less defamatory to speak of a Mahamedan as having been 'outcaste' and the word "caste" is not entirely confined to Hindus. "Caste" refers to any class who keep themselves socially distinct or inherit exclusive privilege. 1927 Mad. 397; 28 Cr. L. J. 207; 99 I. C. 943; 25 L. W. 357.

—where the accused being called upon by a Jamiat of Khojas to show cause why he should not be excommunicated, communicated his reply by publishing it in his local paper in which he alleged that the Jamiat was a dangerous society giving every encouragement to murder and assassination etc. the accused could not claim exemption under exception 1 or 9 although he had been under a vague apprehension that the effect of his excommunication might be that an ignorant and fanatical adherent of the Jamiat might take it into his head to try and murder the accused. 4 S. L. R. 67.

—a defamatory statement made in the presence of a number of persons does not cease to be such merely because the accused has been challenged by the complainant to make it. 1926 All. 237; 92 L. C. 694; 27 Cr. L. J. 310; 5 Cr. R. 124.

Privileges of Judges, Advocates, Vakils, Pleaders, Parties and witnesses.

Judges.

—in a civil case it has been held that an action for slander cannot be maintained against a Judge for words used by him while trying a case in court even though such words were alleged to be false, malicious and without reasonable cause. 17 M. 87.

—a number of persons presented a petition before a Judge without noting their parentage and place of residence. The Judge instead of simply returning the petition observed in a facetious vein that there was only one person known to him in history whose miraculous birth gave rise to the Christian dogma of immaculate conception and that surely the petitioners did not claim

a. 95 I. P. C., 8 O. W. N. 157.

Advocates, Vakils, Pleaders.

—advocates in India, which term includes Vakils and pleaders, have not such unqualified and absolute privileges as is accorded to

S. 499. Privileges of Judges, Advocates, Vakils, Pleaders, Parties and witnesses—contd.

their brethren in England. Imputation on the character of a witness made in good faith and for the protection of the interest of the client is not defamatory. Good faith will be presumed and opportunity should be given to offer explanation before summons is issued. While counsels have their privileges they have also their responsibilities and they ought never abuse their privileges. There may be circumstances which may show that the question or remark objected to was made wantonly or from malice or from private motive but the greatest care ought to be taken to inquire into the circumstances. 35 C. 85 : 46 C. L. J. 227. 1927 Cal. 823 : 28 Cr. L. J. 877 : 104 f. C. 717.

—it is not defamation for a pleader to cross-examine a witness, if it appears that the question assumed a state of facts to be true, which was not really so, if it is based on facts known to the pleader, which knowledge was used in apparent good faith. In the morass of this country, where instructions, to the personal knowledge of one, are very commonly inaccurate and misleading, a pleader would certainly be at least as much justified in acting on his own recollection as on specific instruction and when he draws merely a wrong inference from a fact, that of itself, in the absence of any malice, should not take him out of the ninth exception. 36 C. 375. 13 C. W. N. 340. 9 C. L. J. 259. 9 Cr. L. J. 165 : 1 I. C. 147, (19 Bom. 340, 9 Bom. L. R. 1287) *fol.*

—when a pleader is charged with defamation in respect of words, spoken or written, while performing his duty as a pleader, the court ought to presume good faith and not hold him criminally liable, unless there is satisfactory evidence of actual malice and unless there is cogent proof that unfair advantage was taken of his position as pleader for an indirect purpose. 9 Bom. L. R. 1287.

—a pleader is entitled to the presumption that the questions he asks in cross-examination are asked in good faith for the protection of the interest of the client. The presumption, therefore, is that a question asked in cross-examination making an imputation, affords no ground for a criminal prosecution. To rebut the presumption of good faith, there must be convicting evidence that the pleader was actuated by an improper motive personal to himself and not by a desire to protect or further the interest of his client in the cause. It is not sufficient merely to allege that the client knew the imputation to be untrue. Therefore where a pleader for the accused asked a prosecution witness in cross-examination whether he smoked *ganja*, he is not liable to be prosecuted for defamation by the witness where no improper motive on the part of the pleader is alleged. 41 C. 314. 18 C. W. N. 424. 14 Cr. L. J. 528 : 20 I. C. 1008, 36 C. 375 : 13 C. W. N. 340 *Rel.*

—when a lawyer acting in the course of his professional duties is compelled, subject to the disciplinary action of the court to forward everything which may assist his client, good faith is to be presumed and bad faith is not to be assumed only because the

S. 499. Privileges of Judges, Advocates, Vakils, Pleaders, Parties and witnesses—*contd.*

statement is *prima facie* defamatory. Even the presence of malice will not override the presumptions of good faith if the statement was absolutely necessary in the interest of the client and where the

ely imperiling the interest of
: 52 M. L. J. 269 : 28 Or. L. J.
10 M. 28, F. B. doubted, 51
F. B. Ref. 1925 Rang. 345 :

4 Bur. L. J. 147.

—In the case of a party to a judicial proceeding who is prosecuted for defamation in respect of statement made therein, he must bring himself within the exceptions to s. 499 I. P. C.; in the case of an advocate charged with defamation in respect of words spoken in the discharge of his professional duty though the court will presume the contrary. The burden is cast upon the prosecution to prove absence of good faith. 6 Pat. 224; 7 Pat. L. T. 608; 97 I. C. 354; 1926 Pat. 499; 27 Or. L. J. 1090

—It is the duty of the court when complaint is made against a legal practitioner for defamation to presume that the remark complained of was made on instruction and in good faith. The English Law of absolute privilege does not apply in this country to statements of advocates in judicial proceedings. Before proceeding against a legal practitioner full opportunity should be given to him to offer an explanation. 4 Bnr. L. J. 147 : 1925 Rang. 345 : 3 Rang. 524.

—but it has been held by a Full Bench of the Bombay H. C. that in this country an advocate enjoys the same measure of license as he enjoys in England. He cannot be punished for acting on the instructions given him when he did not and could not know that they were false and he has the fullest liberty of speech so long as his language is justified by his instruction or by the evidence or by the proceedings in the record. 2 Bom. L. R. 3 F. B.

—position of the person making this imputation must be taken into consideration. 19 B. 340, 4 W. R. 22.

—when a complaint is made against an advocate for having used defamatory words it is the duty of the Court to presume that the remark or question objected to was made on instruction and in

—but a pleader must use a certain amount of common sense and caution in asking a defamatory question. There may be cases where under proper instruction he is entitled to ask questions which are defamatory to the person in as to impeach his credit. But where the character of the witness is known the pleader will not be justified in asking questions recklessly without regard to seeing if

S. 499. Privileges of Judges, Advocates, Vakils, Pleaders, Parties and witnesses—contd.

there was any truth in them. Where the pleader for one of the parties asked the witness in the box whether he was a gambler, a thief and had dined in prostitutes' houses, whether he had driven away his wife from his house and whether his wife was leading an immoral life, the witness protested against the questions and denied them categorically and then brought a criminal case for defamation. It appeared that on a previous occasion the pleader had threatened the witness and the questions were entirely irrelevant while the place being a small one the pleader must have known enough about the reputation of the witness, held that under those circumstances the pleader cannot be said to have acted in good faith and he was rightly convicted for defamation. 54 C. 137: 1927 Cal 303: 23 Cr. L. J. 472 101 I. C. 600.

—an advocate cannot take shelter behind his clients when he allows himself to be made the medium of reckless imputation on a Court of Justice. 2 L. B. R. 130 F. B.

—where an advocate is charged with defamation in respect of a statement made as a party in a departmental proceeding before the Deputy Commissioner and embodying his personal opinion concerning the allegation contained in a letter written by him to a Magistrate that the latter had accepted a bribe, onus is on him to prove that the statement is covered by one of the exceptions to s. 499 I. P. C. 1931 Rang. 83: 1931 Cr. C. 371. (3 L. B. R. 265, 3 U. B. R. 101, 1931 Rang. 81, 1921 Cal. 1) Ref. on 1925 Rang. 345 Dist.

—where a pleader representing a complainant wrote to the trying Magistrate enquiring as to when his client's case would be taken up and in the letter described the accused as a notorious wrongdoer, on the prosecution for defamation it was held that the pleader was guilty as the libel was not uttered by him in the discharge of his duty as a pleader. 9 Bom. L. R. 1287.

Parties.

—if a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of sec. 499 I. P. C. (41 C. 1023 p. 1048: 20 C. L. J. 161: 41 I. A. 141 I. P. C. Ref). Under the Letters Patent the question must be solved by the application of the provisions of the I. P. C. and not otherwise; the Court cannot engraft thereupon exceptions derived from the common law of England or based on grounds of public policy. Consequently, a person in such a position is entitled only to the benefit of the qualified privilege mentioned in s. 499 I. P. C. 48 C. 388: 24 G. W. N. 982: 32 O. L. J. 91 Sp. B.

—the privilege defined by the exceptions to s. 499 I. P. C. must be regarded as exhaustive as to the cases which they purport to cover and recourse cannot be had to English Common Law to add new grounds of exception to those contained in the sec. 49 M. 728: 1925 Mad. 906: 1916 M. W. N. 606: 95 I. C. 27 Cr.

S. 499. Parties—*contd.*

L. J. 1026: 5 M. L. J. 112 F. B., (36 M. 116, F. B., 37 M. 110).
overruled.

—a complainant making an insolent and gratuitous statement imputing immorality to a woman cannot possibly bring himself within that exception because it cannot be said that the statement he made was made in good faith for the protection of himself or of any other person or for the public good; nor can the protection which is given upon principles of public policy to a witness he given to a complainant who when asked by a Magistrate to state his grievance *deliberately* makes a defamatory statement without any justification. 45 B. 15: 24 Bom. L. R. 400: 69 I. C. 91: 23 Cr. L. J. 654: 1922 Bom. 381.

—relevant statements made by an accused person under s. 342 Cr. P. C. are
 policy or exceptions
 apart from the principle
 R. 1: 93 I. C. 151: 1

the Madras High Court held that a statement of a defamatory character made by an accused in the course of a statement which he is invited to make under s. 342 Cr. P. C. is privileged, 5 M. L. T. 256, so also the Allahabad H. C. has held that an accused making defamatory statements in answer to questions put to him by court is immune from punishment because of s. 342 Cr. P. C. 1927 All. 707: 25 A. L. J. 855: 8 A. I. Cr. R. 211.

—statements made in the course of judicial proceedings are absolutely privileged. Information or a report made to the Police does not come within this principle. 1923 All. 167.

—when a party to a judicial proceeding is prosecuted for defamation in respect of statement made therein, in order to escape from the liabilities he must bring himself within the exception to s. 499. But when an advocate is charged with defamation in respect of words spoken or written in the discharge of his duties, though the privilege is not absolute but qualified, the Court will presume good faith unless there is cogent proof to the contrary. The prosecution is to prove absence of good faith. 97 I. C. 354: 7 Pat. L. T. 608: 6 Pat. 224: 1926 Pat. 499: 27 Cr. L. J. 1090.

—a party relying on the exceptions to sec. 499 I. P. C. should prove the same. In dealing with exceptions 8 and 9 the question of good faith should be considered. The definition of "good faith" in s. 52 I. P. C. does away with the presumption that the accused acted *bona fide* until the contrary is proved, and under the Indian Law the accused must show that he has made the imputation not without
 the question of good faith
 intellectual capacity of the
 surrounding facts. 56 C. 1012

—a party who gives
 proceeding may be prosecuted for any defamatory statement made in the course of his evidence under s. 500 I. P. C. Such a person may

S. 499, Parties—*contd.*

plead the ninth exception to sec. 499 I. P. C. in defence. 4 Bur. L. J. 181

—imputation in affidavits filed in court are not absolutely privileged 1931 Rang. 81. 8 Rang. 659: 128 I. C. 37: 32 Cr. L. J. 132.

—where a statement was made by a party in a judicial proceeding of some interest in the law of the law taken by the
To succeed in a defamation
proved. 19 Cr. L. J. 641: 45

1 C 653 (Nag.)

—it is against public policy to prosecute complainants for statements contained in petitions presented in good faith for their protection. Where the Appellate Court found that the plea of good faith was made out so as to render exceptions 8 and 9 to sec. 499 I. P. C. applicable, the High Court will not interfere with that finding in revision. 1929 M. W. N. 593.

a person opposing the
Registrar objecting to
1. 1912 M. W. N. 473:
C. B.

—where an application and a counter-application to prevent a breach of the peace were being investigated into by the police the accused called the complainant a 'rogue.' It appeared that some four months back the complainant was convicted and fined at the instance of the accused. The accused having been convicted of defamation it was held that the accused was protected by exception 9, inasmuch as the statement was made apparently for the protection of his own interest and in good faith and when his application was under
20 Bom. L. R. 601: 19 Cr. L. J. 731 ;

termination of a proceeding
in answer to a query of his
pleader stated that the real cause of the dispute was that at some past time, there had been some quarrel between parties owing to the accused party having said that complainant's daughter-in-law had eloped with some body, the statement did not come within the definition of s. 499 I. P. C. because he did not make any imputation with the intention of harming the reputation of anybody. 13 C. W. N. 1087.

Pleadings.

—if a party to a judicial proceeding is prosecuted for defamation in respect of a statement made therein on oath or otherwise, his liability must be determined by reference to the provisions of s. 499 I. P. C. The Court cannot engraft thereupon exceptions derived from the Common Law of England or based on grounds of public policy. 48 C. 388: 24 C. W. N. 982: 32 C. L. J. 94 Sp. B.

—a defamatory matter appearing in a plaint is not privileged. 5 C. W. N. 293, 23 C. 867, and a person making a defamatory state-

S. 499.. Witnesses.—*contd.*

—a witness who being actuated by malicious motives makes a voluntary and irrelevant statement not elicited by any question put to him while under examination but to injure the reputation of another, commits an offence punishable under s. 500 I. P. C. He cannot claim the privilege allowed to a witness under s. 132 Evi. Act. 1928 Nag 58 : 105 I. C 820 : 28 Cr. L. J. 996 : 9 A. I. Cr. R. 204, 32 C. 756, 21 C. 392, 2 W. R. (Cr.) 36, 3 W. R. Cr. 45, but if the statements were relevant to the issue in the case under inquiry no prosecution for defamation would lie. 27 C. 262, and delamatory statements in answer to questions put by a police officer conducting an investigation under the Code of Criminal Procedure did not constitute an offence. 28 C. 794, 41 C. 970, 16 M. 235.

—following the principles of some English cases and the Privy Council case reported in 11 Beng. L. R. 321 the Madras H. C held the statements made by witnesses in the witness box are absolutely privileged, if they are false, the remedy lies in indictment for perjury and not for defamation because the public policy requires that the witnesses should not be exposed to the fear of prosecution except for perjury. 11 M. 477 followed in 30 M. 222 ; but in a recent case the Madras H. C. has held that under the Indian Law a witness has not absolute privilege as regards the statements made by him but has only a qualified privilege under the 1st and 9th exceptions to s. 499 I. P. C. 52 M. 432 : 1929 M. W. N. 84 : 1929 Mad. 236 : 116 I. C 337 : 30 Cr. L. J. 613 : 56 M. L. J. 570.

—the former Chief Court of the Punjab held that a person making a *prima facie* defamatory statement as a witness in a judicial proceeding is responsible for defamation irrespective of his liability to be prosecuted for perjury and he is only protected if he is able to establish that he comes within any of the exceptions to sec. 499 I. P. C. 7 P. W. R. 1911 Cr. : 10 I. C. 682 : 12 Cr. L. J. 193. Similar cases, 31 P. W. R. 1912, 244 P. L. R. 1912

—the Allahabad High Court has also held that a witness has no greater protection against a charge of defamation than any other person and a witness in order to be protected in the case of state-

g himself within one or
59 I. C 863 : 22 Cr. L. J.
that the ninth exception
to s. 499 I. P. C. is intended primarily to apply to statements which
the accused cannot prove to have been true in fact or which are
mere expressions of opinion or otherwise of such nature that the

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n the
position of the witness would be a difficult one but under s. 132 of
the Evidence Act if a witness is compelled to make a defamatory
statement a prosecution will not lie but the protection allowed by s.

S. 499. Witnesses. -confid.

132 Evl. Act must be claimed expressly by the witness before he makes the statement 40 A. 271. 16 A. L. J. 201; 19 Cr. L. J. 231; 431 C 823 29 A 635 F B Ref.

in case she was not married, and when such statement is made by a witness in his examination-in-chief when the character of the woman is not a fact in issue he is not protected by s. 132 Evl. Act, unless the Judge himself asks the question. 1930 All. 493; 1930 Cr. C 737 (32 C. 756, 18 A. L. J. 112) Ref.

Exception 10. Caution intended for good of person to whom conveyed or for public good.

—the complainant was put out of caste at a meeting of his caste fellows for having taken water from an untouchable man. The accused told some of the members of the caste not to take water from the hands of the complainant as in that event they would incur the penalty of excommunication; it was held that the accused was not guilty of any offence and his case fell within exception 10 to s. 499 I. P. C. 46 A. 61; 22 A. L. J. 79; 25 Cr. L. J. 472; 1924 All. 961; 77 I. C. 824.

—where the accused was charged with having distributed defamatory leaflets against the complainant describing him as a *dosh* or sinner, after the said complainant had been put out of caste and again readmitted on performing expiatory ceremonies, it was held that privilege claimed by the accused under s. 499 could not be availed of by him because he had not acted in good faith. 15 M. 214.

—where accused was proved to have stated at a caste meeting that the complainant's wife had been married before and a prosecution for the offence of defamation was launched exception 10 was not applicable. Exception 10 applies to cases, for instance, where one person warns another against employing a third man in his service saying that he is dishonest. 34 C. W. N. 580 1930 Cal. 645; 127 I. C. 553; 1930 Cr. C. 1206; 31 Cr. L. J. 1225

S. 500 (Punishment for defamation).

Maintainability of defamatory case on facts of cases under ss. 182, 193 and 211 I. P. C.

—the refusal of an application for sanction to prosecute a party to a judicial proceeding under ss. 182 and 193 I. P. C. does not attract the operation of sec. 403 Cr. P. C. and is no bar to the prosecution for defamation in respect of the same facts. 48 C. 383; 24 C. W. N. 962; 32 C. L. J. 94; 22 Cr. L. J. 31; 59 I. C. 143 F. B.

—but where the accused in a case under s. 409 I. P. C. being discharged applied to the Magistrate for sanction under s. 195 Cr. P. C. to prosecute the complainant under s. 211 I. P. C. and in the alternative asked for process under s. 500 I. P. C. and

S. 500. (Punishment for defamation)—*contd.*

Magistrate while refusing sanction granted process under s. 500 I. P. C., it was held by the H. C. that on the facts, the offence, if any, was clearly under s. 211 I. P. C. and the application for sanction to prosecute under s. 211 I. P. C. having been rejected prosecution for offence under s. 500 I. P. C. on the same facts was not proper. 44 C. 970 : 21 C. W. N. 253 : 25 C. L. J. 445 : 18 Cr. L. J. 377. 38 I. C. 761.

—similarly where the complaint and charge were under s. 211 I. P. C., a conviction under s. 500 I. P. C. was held illegal. 90 L. J. 342 : 23 Cr. L. J. 641 : 81 I. C. 81 : 4 U. P. L. R. 81

—but the Punjab H. C. has held that where the complaint purports to be under Ss. 193 and 211 I. P. C. the Magistrate can after hearing the evidence frame the charge of defamation and convict the accused under that section. 6 Lah. 375 : 1925 Lah. 631 : 26 Punj L. R. 532, 23 P. R. 1895 *fol.* (10 A. 39, 27 M. 61, 29 C. 415), *Dist.*

—an acquittal under s. 182 I. P. C. in respect of a false information against a police, contained in a petition to the manager of an estate, on the ground that the person to whom the information was given was not a public servant, does not bar a subsequent prosecution by the police for defamation under s. 500 I. P. C. on the same statements. 37 C. 604.

—the Allahshad H. C. has held that the Appellate Court is competent to alter the conviction from one under s. 182 I. P. C. to one under s. 500 I. P. C. notwithstanding the fact that there was no complaint by the person aggrieved. 25 A. 534.

Necessity of complaint.

—when a charge of defamation is not contained in the complaint presented to the Magistrate but is added subsequently by the Magistrate upon the statements made by the complainant it is not a legal complaint made by the aggrieved person. 10 A. 39.

—prosecution for defamation being essentially a personal action cannot be continued by the legal representative of a deceased complainant. 10 P. R. 1908

—husband is entitled to complain for defamation against one who imputes unchastity to the wife. 25 B. 151 F. B., 14 M. 379 *followed*

—where a married woman is defamed by imputation of unchastity her husband is a person aggrieved under s. 198 Cr. P. C. and has the right to prefer a complaint of defamation. 47 M. L. J. 746 : 20 L. W. 911, 5 Lah. 301 : 1914 Lah. 559.

—where a widowed sister lives under the guardianship of her brother as a member of his family the brother is a "person aggrieved" in case the sister is defamed by unchastity being imputed to her and he is competent to complain. 32 C. 425.

—but the brother-in-law was held not to be competent to lodge a complaint against a person who has defamed his sister-in-law. Rst. unref. Cr. C. 392. (1888).

S. 500. (Punishment for defamation)—*contd.*

—a complaint of an offence under s. 500 I. P. C. should be made by the person aggrieved and not by his official superior, 9 O L J 342 23 Cr L J. 641-81 I. C. 81: 4. U. P. L. R. 81, this case referred to the case reported in 26 M. 43, where it was held that the President of the Municipality was not the "person aggrieved" by the defamation of his subordinate officers.

Jurisdiction

—to maintain a prosecution in a particular court, there must be a publication to a stranger of the libel within the jurisdiction of the court. Where the alleged libel was contained in a letter written from Bangalore to England, to maintain a prosecution in the Bangalore Court, there must be evidence that the letter was handed over to somebody at Bangalore to be taken to the addressee or that it was posted at Bangalore. A letter is deemed to be published both where it is posted and where it is received and opened and where it is alleged to have been posted within the jurisdiction such allegation must be proved. 1923 M. W. N. 913: 33 M. L. T. 168: 45 M. L. J. 754 18 L. W. 718.

—where the publication of the libel is outside British India, the British Indian Courts have no jurisdiction to try the case. Therefore, where an alleged defamatory letter was written and posted from Trivendrum and evidently the publication of the libel was in a Native State outside British India, the British Indian Courts had no jurisdiction to try the offence 1 Weir 579.

Sanction

—unless the Judge or public servant commits an offence in his judicial or official capacity no previous sanction is necessary to prosecute him for using defamatory language to a person in the course of a trial case. 26 C. 852, 2 Bom 481.

—but it was held by the Madras H. C. that a complaint
guage to a witness during
in the absence of sanction
der s. 197 Cr. P. C. 9 M.

—the sanction of the Court appointing a receiver is not necessary in order to proceed against him for a breach of the ordinary Criminal Law of the country, *e. g.*, defamation. 13 Cr. L. J. 491: 15 I. C. 491 (Cal) But it is not a general rule of law that in all criminal proceedings leave of the court is not necessary to prosecute a receiver. Sanction is required to proceed against a receiver when he acts for the protection of the estates in his hands. Therefore, where the alleged act of defamation arises out of a matter of repairs of the estate in the possession of the receiver and is based upon

a estate,
without
) : (30 C.

S. 500. (Punishment for defamation)—contd.*Charge*

—the charge must set forth the particular occasions on which the defamation was said to have been committed, so as to give the accused person an opportunity of defending himself with reference to each act alleged to have been committed by him. 30 C. 402

—the words complained of as constituting the offence must be set out in the charge and proved before the accused can be convicted. 29 C. W. N. 904; 42 C. L. J. 178. 26 Cr. L. J. 1539; 1925 Cal. 121; 90 I. C. 387.

Trial and Procedure.

—an accused justifying his libel cannot both deny as well as justify it, i.e. he cannot be heard to say "I am charged with calling B a knave, I say I never said it but if I did I was right." 19 Cr. L. J. 129; 43 I. C. 417 (Rang), but it has been subsequently held that even where the accused deny having made the statements alleged to be

1. P. C. because the Magistrate thinks that there may be some substance in the defamatory remarks made by the accused. 13 Cr. L. J. 488. 15 I. C. 438

—when in the heat of passion abusive words are exchanged between two persons the offence does not require a severe sentence. 2 Bur. L. J. 10; 1923 Rang 148.

—the courts should at the time of passing the sentence keep in view the position of the parties. 31 P. W. R. 1930 (Cr.): 317 P. L. R. 1913; 21 I. C. 478; 14 Cr. L. J. 606.

—in an action for damages for libel or slander evidence may be given in mitigation of damages to show that the plff. had generally bad character. Similarly in criminal prosecution where it is essential, in order to constitute the offence of defamation, that the person who makes or publishes the imputation complained of, should intend to harm, or know or have reason to believe that the imputation will harm the reputation of the person concerning whom it is made or published, the question what reputation the complainant had, is relevant. Therefore, where it is alleged that the accused had defamed the complainant by saying that the accused had been compelled to pay the complainant, a public servant, a bribe, evidence that complainant had the bad reputation of being bribe-taker cannot be excluded as such evidence would show that the imputation could not damage his reputation as he had none to lose. In any event proof of complainant's bad reputation would affect the sentence to be passed in case of conviction. 4 Lah. 55; 73 I. C. 805; 24 Cr. L. J. 693; 1923 Lab. 235.

—in a prosecution for a defamation the original letter alleged to be defamatory must be produced and its copy should not be used as evidence. 45 M. L. J. 754; 33 M. L. T. 168; 1923 M. W. N. 913; 18 L. W. 718

S. 500. (Punishment for defamation)—*contd.*

—the production of a news paper by a subscriber was sufficient proof of publication and it could be presumed that he had read the defamatory article. 26 A. L. J. 196: 1928 All. 222: 115 I. C. 872: 30 Cr. L. J. 530.

—where on the transfer of a Magistrate his successor takes the seisin of the case but no application is made for *de novo* trial, the trial Magistrate's action is not without jurisdiction, but it is certainly most desirable in a case of defamation that the examination and cross-examination of the complainant should be held in the presence of the Magistrate who has seisin of the case because a Magistrate cannot adequately decide such a case without having had the complainant examined and cross-examined before him 13 C. W. N. 550

—in a prosecution for libel the prosecution must affirmatively prove that the accused published the libel complained of; admissions as to publication in the written statement of the accused cannot be used to fill up the gap in the prosecution evidence 36 M. 467: 21 M. L. J. 73 2 M. W. N. 576: 10 M. L. T. 506 12 I. C. 961 12 Cr. L. J. 585, (27 M. 238, 29 M. 372, 26 C. 49) *Ref.*

—the first step that a complainant must take when commencing a prosecution or a civil suit for defamatory publication, is to satisfy the court that he is the person aimed at. 26 A. L. J. 509: 1928 All 321 117 I. C. 355. 30 Cr. L. J. 766

—although it is for the prosecution to make out a case for conviction, the accused person must prove the existence of circumstances bringing the case within the exception to s. 499 I. P. C. 1928 Nag 58 25 Cr. L. J. 996: 105 I. C. 820.

—in a proceeding for defamation whether in a civil suit or under s. 500 I. P. C. the defendant or the accused as the case may be, must for his defence depend upon the facts of each particular case which he is certain can be proved by him or his witnesses. If there is no substantial defence an immediate apology in the widest and most unreserved terms may fairly be presumed to decrease the damages or lessen the punishment under s. 500 I. P. C. Occasionally the facts may be so strong that the counsel may advise the client to "justify" The most dangerous plea should be a practical certainty of success, no act shall be done towards justification. 26 A. L. J. 30 Cr. L. J. 766.

—the editor of a newspaper published defamatory matter under the guise of rumours. The complainant set out certain conditions upon which he would refrain from seeking remedy in a Civil or Criminal Court. Thereupon the accused instead of expressing the utmost regret for its publication wrote a letter aggravating the magnitude of the offence, held that the sentence of six months' simple imprisonment was not adequate for the offence and that more severe sentence should have been passed. 26 A. L. J. 509: 1928 All 321: 117 I. C. 355: 30 Cr. L. J. 766.

S. 500. (Punishment for defamation)—*contd.*

—an editor of a newspaper is as much responsible for a defamatory letter published in his columns as if he had originally penned it. It is no defence to a civil suit or criminal prosecution that the person who published the libel or slander did not originate it, but heard it or received it from another, nor is it a defence that it was a current rumour and the person publishing it *bona-fide* believed it to be true. Publication of a defamatory 'rumour' is as actionable as if the statements were published without qualification. 26 A. L. J. 509; 1928 All 321; 117 I. C. 355; 30 Cr. L. J. 766.

—where two accused were put on their trial on charges under ss. 500 and 501 I. P. C. and convicted under s. 500 I. P. C., held that the joint trial was illegal. 36 C. L. J. 287.

—the court should be careful when a complaint of defamation is made with respect to a proceeding in a civil court to see whether the provisions of s. 209 Cr. P. C. and of the Cr. P. C. generally have not been evaded. Otherwise people will be hampered in their access to courts and in getting justice by the fear of prosecution for defamation in case of failure. 86 I. C. 1005; 26 Cr. L. J. 941.

—a person may be guilty of an offence under s. 504 and not s. 500 I. P. C. for calling another "badmash" and "belman." 51 P. L. R. 1922 1922 Lah. 459; 4 L. L. J. 480.

Revisional power of High Court.

—the High Court, in exercising its powers of revision in a case under ss. 500 and 501 I. P. C. could hear a private complaint. 36 C. L. J. 287.

S. 501. (Printing or engraving matter known to be defamatory).

—this sec. speaks of an offence distinct from that of an offence under s. 500 I. P. C. 18 P. R. 1889.

S. 502. (Sale of printed or engraved substance containing defamatory matter).

—the definition of the offence under this sec. requires knowledge that the printed substance sold contains defamatory matter. If the accused sells in ignorance of the contents he is not guilty of an offence under this sec. If he sells notwithstanding knowledge of the contents and the contents are defamatory, he is guilty. 8 P. R. 1891.

—malice in the sense of active ill will against the person defamed is not a necessary constituent of the offence of defamation. 26 A. L. J. 509; 1928 All 321; 117 I. C. 355, 30 Cr. L. J. 766; 10 A. I. Cr. R. 145.

Ss. 503, 506. (Criminal intimidation, punishment for criminal intimidation).

—the threat referred to in this sec. must be a threat communicated to the person threatened for the purpose of influencing his mind. 15 C. 671.

Ss. 503, 505. (Criminal intimidation, punishment for criminal intimidation)—*confd.*

—a threat to ruin by cases does not constitute offence under these Ss 30 C 418 : 7 C W. N 116.

—a person threatening a police officer to draw up a document to the effect that a search was conducted and nothing incriminating was found was guilty under this sec. 17 A L J 1047.

—when deterrent sentence is justified in case of criminal intimidation 1922 Pat 14 : 1922 P. 267.

—where the object of an assembly of some thousand of men was to march into a bazar and there to put a stop to a sale of certain commodities the object of the assembly is unlawful and the object is one to commit something, which would come under s. 506 I P C 1924 All 233.

—where the accused with a view to prevent sale of foreign cloth asked a dealer in foreign cloth to execute an agreement to the effect that he would not import any more foreign cloth for at least one year and on default of the promise he would pay a fine of Rs. 10 and in case of the breach of the agreement the accused threatened to picket his shop the accused was guilty of criminal intimidation. 1931 All 263 : 32 Cr. L. J. 465 : 130 I. C. 193 : 1931 Cr. C. 423.

—a threat of a decree is a threat of harm to an individual in his person, reputation or property and it is immaterial the tribunal is incompetent to execute its decrees. Where the President of a self-constituted Arbitration Court served a notice on the complainant reciting that if he did not appear the case would be decreed *ex parte* against him, the President was guilty under s. 503 27 C. W. N. 479 : 37 C. L. J. 526 : 72 I. C. 508 : 24 Cr. L. J 396.

—where the accused demanded of the complainant certain property of theirs in the possession of the latter and used threats, held the offence of criminal intimidation was complete even if the object of getting possession was not achieved. 21 A. L J. 877.

where a Municipal Commissioner threatened a hatcher that his livelihood is the object of intimidation.

—where a municipal servant distrained the goods of a tenant for the tax due on her tenancy and threatened to charge them under that sec. as the procedure is perfectly legal. 1931 J. 330 : 1931 Oudh 86 : 7 C. W.

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—where the accused threatened a butcher that he would kill his living in the night criminal intimidation.

—where a municipal servant distrained the goods of a tenant for the payment of municipal tax in his absence and the wife of the tenant asked her husband where he was, the husband, who was a teacher, held amount to threat u

—where the accused are charged under s. 341 I. P. C., the trying Magistrate is justified in charging them under that sec. as well as under s. 506 I. P. C. and the procedure is perfectly legal. 1 Oudh 73 : 129 I. C. 166 : 32 Cr. L. J. 330 : 1931 Oudh 86 : 7 : 1048 : 1931 Cr. C. 129.

Ss. 503, 506. (Criminal Intimidation, punishment for criminal intimidation)—*contd.*

—where the threats uttered by the accused were (1) that the complainant would be socially boycotted and (2) that on his death no one would carry his dead body to the place of burial if he continued to deal in foreign cloth, such threats do not amount to offences under s 506 I. P. C. The fact of the complainant being a pious Mahomedan is not material. 1931 Lah. 283: 1931 Cr. C. 544.

S. 504. (Intentional insult with intent to provoke breach of the peace).

—the term "insult" signifies to treat with offensive disrespect to offer indignity to. 21 C. W. N. 95: 24 C. L. J. 137.

—an insult is not less intentional because it is "incidental" to another insult or even to another statement or proceedings which is not insulting. 7 N. L. J. 124: 81 I. C. 903

—this sec. provides remedy for using abusive and insulting language. 26 C. 653, 663 F. B.

—this sec. refers to an insult intentionally inflicted and likely to result in a breach of the peace. 24 A. 155.

—mere abuse will not constitute the offence. 39 M. 561.

—an offence under this sec. is committed if the provocation offered by the accused is of such a character as to cause the person provoked to commit any offence. The provocation need not be likely to cause breach of the peace. 99 I. C. 604: 1927 Lsb. 129: 28 Cr. L. J. 172.

—there is nothing in this sec. which confines the insult to spoken words and would not cover words written in letter. An offence under this section is committed not only if the provocation offered is of such nature as to cause the person provoked to commit breach of the peace but even if it is of such a character as to cause

When a letter is sent by messenger the complainant might lose his life or assault the messenger and so unaccompanied by an intention knowledge that a breach of the law under this sec. But on the other hand a circumstance would be likely to cause a breach of the peace is even though the person insulted may have been reduced to a state of object of terror so as to render improbable that he would commit a breach of the peace. The insult; again, may be of such a nature that a person of ordinary temperament would not complain of the abuse and the abuse might come within the terms of this sec. 32 Bom. L. R. 103: 1930 Bom. 120: 1930 Cr. C. 195.

—in dealing with a case under this sec the Court is not to judge the temperament or the idiosyncrasies of the individual person concerned. It should try to find out what in the ordinary circumstance would have been the effect of the abusive language used.

S. 504. (Intentional insult with intent to provoke breach of the peace)—*contd.*

Where there is no doubt that the abusive language used by the accused might ordinarily have resulted in broken limbs or at least in an affray and consequent breach of the peace an offence under this sec. is committed. 1930 Lah. 344; 1930 Cr. C. 392, (10 M. 333, 1 U. B. R. 290) *Rel on.*

—a person calling another a "badmash" and a "helman" is guilty of an offence under s. 504 I. P. C. and not under s. 500 I. P. C. 51 P. L. R. 1922 : 4 Lah. L. J. 480 : 1922 Lah. 459.

—calling an *Arora* a *Kerow* under provocation is not an offence. 4 Lah. L. J. 230 : 65 I. C. 635 : 23 Cr. L. J. 171.

—when a person poins a Mohamedan by his beard in a public place he intentionally insults him and is guilty of an offence under s. 504 I. P. C. 25 A. L. J. 73 : 86 I. C. 79 : 26 Cr. L. J. 703 : 1925 All. 318.

—to insult another intentionally is not an offence punishable under s. 504, unless the offender intends by that insult to provoke the other person into breaking the peace by assaulting him or putting him in danger of being assaulted or compelling him to land or remain in

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—for an offence under s. 504 I. P. C. mere abuse will not do without an intention to cause a breach of the peace by that breach of the peace is

—when the failure to words in the charge does not is not vitiated. 104 I. C. 9 Lah. 280 : 29 Punj. L. R. 469

S. 505. (Statements conducing to public mischief).

—the mere causing of fear or alarm to the public or to a section of the public does not constitute an offence under s. 505, but it is a offence that the fear or alarm should be caused in such circumstances that a person may be induced to or against the public tran-

S. 506. (Punishment for criminal intimidation).

See cases under ss. 503, 506.

S. 508. (Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure).

—where the exercise of ecclesiastical jurisdiction is plainly *ultra vires*, or otherwise unsanctioned by the ordinances of a religious society or where such ordinances controvert the general law, and, in either case, consequences result which the criminal law was intended to restrain, the criminal Courts are not at liberty to decline jurisdiction. 8 M. 140.

S. 508. (Act caused by inducing person to believe that he will be rendered an object of the Divine displeasure)—
contd

—the words of this section seem to imply that the threat must be one which can be put into execution by the person threatening. It is not necessary that the injury should be inflicted by the offender, it is sufficient if he can cause it to be inflicted by some agency and the infliction of it could be avoided by some act or omission that the person threatening desires. The punishment by God is not one that the accused could cause to be inflicted in the present case or the execution of which he could avoid. This section requires that by some act of the offender the person warned must be led to believe that he will become or be rendered the object of Divine displeasure. To apply the section some future act on the part of the accused is necessary. 49 M. 774; 26 Cr. L. J. 755; 1925 Mad. 480; 86 I. C. 339; 1925 M. W. N. 113. 48 M. L. J. 190.

—to apply this section it must be shown that the accused threatened to do a future act or illegally to omit to do an act and that by such threat he induced or attempted to induce the person threatened to believe that by that act or illegal omission the person threatened or some one in whom the person threatened was interested, would become an object of Divine displeasure. 6 M. 381 p. 394.

S. 509. (Word, gesture or act intended to insult the modesty of a woman).

—s 509 makes intention to insult the modesty of a woman the essential ingredient of the offence. Where in the midnight the accused entered the room of the complainant with whom he had previous acquaintance and who used to speak to strangers and give Pan Supari to visitors, such intention was held to be wanting. 5 Bom. L. R. 502.

—in order to constitute an offence under s 509 I. P. C. there must be some individual woman or women whose modesty has been outraged. It is not necessary that she herself should make a complaint but there must be an allegation that the modesty of particular person and not merely of any class, order or section, however small, has been outraged. 86 I. C. 968; 26 Cr. L. J. 904. 1925 Sind. 271; 19 S. L. R. 87.

22 C. 994.

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58, 40 A. 221.
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and suggesting to her to take certain action in order to show whether she accepted the terms mentioned in the letter, held that the letter, though enveloped, was an object which was exhibited to the addressee and that the accused intended to insult the modesty and accordingly he was punishable under this sec. 28 Bom. L. R. 99.

S. 511. (Punishment for attempting to commit offence punishable with transportation or imprisonment).

—this sec. does not apply to attempt to commit murder which is exclusively provided for by s. 307. 14 A. 58, 20 A. 143, *contra* 4 B. H. C. 17 50 P. R. 1904 and also does not apply to dacoity. 7 W. R. 48, or to preparation of an act. 4 N. W. P. 40.

—when a man does an act knowing that in the natural course of events a certain result will follow he intends to bring about that result. 4 Bom. L. R. 280.

—preparation consists in devising or arranging the means or measures necessary for the commission of the offence. 25 M. 726, 1 A. 317, 3 M. 4, 65 I. C. 492; 23 Cr. L. J. 108, 1923 P. 307, while an attempt is the direct movement towards the commission after the preparations are made. In the case of mere preparation the court assumes that better reasons would prevail at any moment and the man would change his intention to commit a crime before the actual consummation thereof. 65 I. C. 492; 32 Cr. L. J. 108.

—the real difficulty in distinguishing between preparation and attempt arises in determining where a given act or set of acts passes from the former stage into the latter. Where the commission of an offence requires the performance of a series of acts and the person commences this series with the view to carry it out to its completion, he has in the language of s. 511 I. P. O. done an act towards the commission of the offence in the attempt to commit the offence. 5 N. L. J. 15; 1922 Nag. 40; 65 I. C. 994; 23 Cr. L. J. 210, 2 A. 105 *Ref.*

—it is now settled law that an attempt is possible even when the offence attempted cannot be committed. *above case.*

—an attempt to commit an offence is punishable under s. 511 though the final act short of actual commission of that offence has not been accomplished; making a false claim to the currency

—when a man does an intentional act with a view to attain a certain end and fails in his object through circumstance independent of his own will, he is said to have attempted to effect the object at which he aimed. 25 Cr. L. J. 1424; 89 I. C. 848.

—if the actual transaction has commenced which would have ended in the crime if not interrupted there is an attempt to commit the crime. 37 B. 553; 15 Bom. L. R. 564; 14 Cr. L. J. 451; 21 I. C. 611.

—an act which amounts to an attempt to commit rape does not lose that character merely because the offender does not do a determination to effect his object at all costs. 4 Bur. L. J. 83.

S. 511. (Punishment for attempting to commit offence punishable with transportation or imprisonment)—*contd.*

—the question whether a certain act is merely one of preparation or one committed in the course of an attempt is a question of fact. 15 A. 178.

—*attempt* is an act done in part execution of criminal design amounting to more than mere preparation. 30 C. L. J. 289 Sp. B.

—all that is necessary to constitute an attempt to commit an offence is some external act something tangible and ostensible of which the law can take hold as an act showing progress towards the commission of the offence, though the progress was interrupted. 103 I. C. 408: 1927 Lah. 634: 28 Cr. L. J. 680, (34 B. 378, 14 P. R. 1914) *Rel. on*

For other cases see S. 307 and 309 I. P. C.

to commit necessary wards the have been done in the attempt to commit it. 3 B. L. R. 55, 8 C. W. N. 278, 13 P. R. 1879.

—the offences coming under s. 511 must be punished entirely irrespective of s. 75, 17 A. 128, and the charge should mention this sec. as well as the sec. which declares the punishment for the offence attempted to be committed. 1 W. R. 11.

—purchasing a stamp paper with a false endorsement and making preparation for making a false document comes under this sec. 2 A. 105, 16 A. 409, 3 M. 4, 14 A. L. J. 688.

—a person charged of principal offence may be convicted of an attempt. 27 C. W. N. 821: 1924 Cal. 18.

MANDATORY OR DIRECTORY.

—disobedience of a mandatory provision nullifies a proceeding irrespective of any question of procedure. Whether a mandatory provision is imperative or only directory depends upon a consideration of various circumstances. 42 C. L. J. 131.

—the principle to be applied in considering whether the provisions of a Statute or an Act, are imperative or directory is this:

77 F. B.

MAXIMS.

Autre fois acquit.

—composition has the effect of— person who is entitled to compound with whom the composition takes accused are tried for the specific

Maxims—contd.

subsequently laid and there has been no composition with the person entitled to compound, the later prosecution can be proceeded with. 1930 M. W. N. 692.

—an acquittal under s. 247 Cr. P. C. is an acquittal which would have a further trial under sec. 403 (1) Cr. P. C., the above rule applying. 33 C. W. N. 230: 49 C. L. J. 119: 116 I. C. 174: 1929 Cal 189: 30 Cr. L. J. 585.

—where the accused were tried for an offence under the Railways Act and were convicted and fined and subsequently were proceeded against for an offence under s. 323 I. P. C. for assault committed in the course of the Act which formed the basis of the prosecution under Railways Act, held that applying the above maxim the subsequent trial was not maintainable. 33 C. W. N. 948

Falsus in uno falsus in omnibus.

—where the prosecution case has been found to be false in material and essential points and the defence version found to be largely true a conviction is unsustainable. The above maxim is applicable to such cases. 61 I. C. 1007: 22 Cr. L. J. 479 (Pet)

—the above principle cannot be universally applied in India and the fact that statements of witnesses are believed against some and not against other accused persons, is no ground for interference in revision. 82 I. C. 33: 1925 Oudh. 65: 25 Cr. L. J. 1169: 11 O. L. J. 693.

Omnia praesumuntur rite esse acta.

—when a defence declaration is put in, it is incumbent on the examine a witness regard-
 ay be taken that they did
 : application of the above
 : 930 Cr. C. 196: 125 I. C.

Generalio specialibus non derogant.

to statements made by accused
 the special law provided under s.
 by the general law under s. 62 Cr.
 17: 54 C. 237: 99 I. C. 227: 28 Cr.

Omnia praesumuntur rite et solemniter acta.

—the Judicial Committee of the Privy Council is not a court of a Criminal appeal. In order that the Board might interfere there must be substantial and grave injustice done. Once however the case is brought before the Board it is incumbent on them to examine the judgment as given. Where the local ordinance prescribed jury trial in criminal cases but at the same time directed that if it was not practicable it might be dispensed with, held that practi-

Maxims—contd

cability and the state of local circumstances were for the local court and that the Board will not interfere on the ground that the trial for a murder case was without a jury, the above maxim applying 34 C. W. N. 599 : 59 M. L. J. 127 ; 124 I. C. 578 ; 31 Cr. L. J. 701 : J. R. 1930 P. C. 212 : 1930 P. C. 201 : 1930 Cr. C. 884 : 1930 Cr. C. 366 P. C.

Omnia Presumuntur rite et solemniter esse ocladonee probetur in condrrarium—

—there is no justification for presuming that because a person was a member of an association which was lawful, he remained a member of that association after it had been declared unlawful. The law presumes innocence and lawful conduct on the part of the citizens. 1931 Bom. 235 : 130 I. C. 27 ; 32 Cr. L. J. 472 : 33 Bom. L. R. 90 : 1931 Cr. C. 177 : 1931 Bom. 129

Ignorance of law is no excuse

—ignorance of the law is ordinarily [very much of an excuse as leads to a reduction of the sentence though it cannot lead to an acquittal. 1928 Nag. 188 : 24 N. L. R. 110 : 109 J. C. 334 : 29 Cr. L. J. 506.

MISCELLANEOUS CASES—GENERAL PRINCIPLES UNDER THE CRIMINAL LAW.

Absence of accused on date fixed for judgment,—case cannot be dismissed for default.

—where the accused was absent on the date fixed for judgment and the Magistrate ordered the complainant to file process fee and on his failure to do so the procedure was wholly : 87 I. C. 419 : 26 Cr. L. J.

300.

Absence of appellant on the date of hearing, effect of.

—where the appellate judgment was to the effect that the appellant was absent and unrepresented but the court had been through the judgment and the whole record and the petition of appeal and could not see any substance in any of the grounds of appeal, there was nothing improper in the same. 1923 Pat. 297 : 26 Cr. L. J. 419 : 85 I. C. 35.

Accomplice, legal character of.

—under s. 133 of the Evidence Act an accomplice is a competent witness but such competency which has been conferred on him by process of law does not divest him of the character of an accused person. Until by securing his discharge, he is granted of a pardon has been against his co-accused and witness-box. 1931 Lah. 35 I. C. 625.

Miscellaneous cases—General principles under the criminal law—*contd*

—an approver is a man of the very lowest character who has thrown to the wolves his former associates and friends in order to save his own skin, and by this betrayal he has purchased his liberty. He is a criminal himself and his evidence must be received with very great deal of caution if not suspicion. It should also be noted that an approver can easily substitute an innocent man for the person who was actually participating with him in a particular crime. That danger must be guarded against and the prosecution must prove not only that the approver had an accomplice but his accomplice was as a matter of fact the accused persons and no other. Further more his evidence must be corroborated in important and material particulars. 1931 Lab. 408; 132 I. C. 185; 1931 Cr. C. 648; 1 R. 1931 Lab. 537.

Accomplice, detention of, in police custody.

... detained in the custody of the police.
... f the subject and does not allow
... there is a legal sanction for it.
... 132 I. C. 519; 1931 Cr. C. 700,
... 2, 704

... to a criminal
... within their
... be determined
... the duty cast
... Government
... cannot claim
... or unless there
... allegation was
... eally in police
... ment to supply
... Advocate the
... necessary information asked for by the court regarding the custody
... of the approver. 1931 Lab. 473; 132 I. C. 515; 32 P. L. R. 498;
... 1931 Cr. C. 697.

Accused's refusal to answer questions, inference therefrom.

—the court may draw such inferences from the accused's refusal to answer questions as it thinks just according to s. 342 Cr. P. C. and s. 114 Illus. (b) Evi. Act, 1931 Lab. 178; 131 I. C. 277; 1931 Cr. C. 298

Acquittal of the offence charged but conviction for another offence, procedure.

—where a person is acquitted of the offence charged but the court finds him guilty of another offence and puts him on trial for that offence, the opinion of that court in the prior trial cannot be allowed any weight in the subsequent trial. 1930 All. 481; 124 I. C. 553; 31 Cr. L. J. 716; 1930 Cr. C. 701.

Miscellaneous cases—General principles under the criminal law—*contd.*

Admission of counsel, effect of.

—It is not the duty of an advocate for a prisoner to approach the trial judge and apprise him that in his opinion the man whose fate has been entrusted to his care, has no defence to make. It is also proper that the judge to whom this confession has been made should not hear the case against the accused. 28 C. W. N. 170 : 38 C. L. J. 411 : 25 Cr. L. J. 817 : 81 I. C. 353 : 1924 Cal. 257 F. B.

—a court cannot decide a criminal case on admissions made by the counsels for the prosecution and defence. 5 Lah. 404 : 1925 Lah. 85.

—no serious defect in the mode of conducting a criminal trial can be justified or cured by the consent of the advocate of the accused. 45 C. L. J. 441 : 31 C. W. N. 271 : 6 Bur. L. J. 65 : 5 Rang. 53 : 8 Pat. L. T. 155 : 25 A. L. J. 117 : 1927 M. W. N. 103 : 38 M. L. T. 64 : 28 Cr. L. J. 259 : 100 I. C. 227 : 29 Bom. 813 : 4 O. W. N. 283 : 1927 P. C. 44.

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Cal. 437 : 1930 Cr.

Alibi evidence.

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29 Cr. L. J.

Alternative charge in case of refusal of sanction.

—it is contrary to public policy and to the recognised principles of the administration of the criminal law to hold that where a charge has been launched which requires sanction by a particular authority and that authority has refused sanction, it is open to a complainant to alter his election, shift his ground and start a fresh charge on an alternative section which does not require sanction. He should have thought of that before 20 A. L. J. 775 : 23 Cr. L. J. 496 : 1922 All. 502.

Alternative defence is not illegal.

—though by setting up an inconsistent defence the defence case becomes considerably weaker, there is nothing illegal in setting up an alternative and inconsistent defence and where the accused's pleader was not allowed to argue the alternative defence before the jury, the trial must be held to be vitiated. 27 C. W. N. 820 : 38 Cr. L. J. 203 : 1923 Cal. 717.

—an accused person cannot be barred from setting up inconsistent pleas 1927 Lah. 710 : 106 I. C. 709 : 29 Cr. L. J. 117, (16 Cr. L. J. 76 and 1923 Cal. 717) *Rel. on.*

Miscellaneous cases—General principles under the criminal law—contd

Amendment of proceeding, necessity of notice to parties.

—it is an elementary right of a party when criminal proceedings started against him are amended that he should have notice thereof, and in the absence of such notice, the trial is vitiated. 1935 Cal 263 81 I. C. 162 25 Cr. L. J. 674.

Appellate Court when can distrust the decision of the trial Court

—when the decision of a criminal court in substance appears to be correct an appeal court should endeavour to uphold the decision even in cases where the rules of procedure by which the trial is to be regulated have been transgressed. Rules and Regulations are intended to be handmaid and not the mistress of the law; in criminal proceedings it is of the utmost importance that a decision just and reasonable on the merits should not be disturbed because in the course of proceedings some flaw can be detected that is not fundamental and which is not proved to have worked injustice to the accused, although it may constitute a breach of the rules of criminal procedure. 57 C. 1233: 51 C. L. J. 171: 34 C. W. N. 296: 1930 Cr. C. 212. 31 Cr. L. J. 536: 1930 Cal. 217: 123 I. C. 664. F. B.

Appeal in two cases should be heard separately.

—where the appellate court tried two appeals preferred by an accused person as one case and having made up his mind that there were two contradictory stories, he found which of the two was true and allowed one of the appeals and dismissed the other, held that it was the duty of the judge to hear each appeal separately and to deal with it on its merits. 32 C. W. N. 328: 47 C. L. J. 211: 109 I. C. 240: 29 Cr. L. J. 512. 1928 Cal. 230.

Arguments of the counsel, right of the accused.

—though the Criminal Procedure Code nowhere provides specifically for the accused's right to be heard in argument, no criminal Court should refuse such a right. 1925 All. 282: 86 I. C. 458: 26 Cr. L. J. 810.

—the accused has a right to be heard through his pleaders and the denial of that right is not a mere irregularity. 55 M. L. J. 626 1928 Mad. 1234: 28 L. W. 656.

Argument of the Counsel stopped by the Court with a promise to hear if necessary, must be heard.

—in hearing an application to set aside an order of discharge a District Magistrate fully heard the applicant's counsel and next s, remarking that remaining points, time the District inel any further, e, held that the nsel, with a pro- the undertaking

Miscellaneous cases—General principles under the criminal law—*contd.*

that the decision should not go against the opponent without affording him further opportunity for presenting his case to the Magistrate. 13 Bom. L. R. 27 : 12 Cr. L. J. 64 : 9 I. C. 350.

Charges, framing of, Court cannot go outside.

—in a criminal trial the accused has to defend himself on the charge framed against him and on no other and the court cannot speculate as to what all parties understood. 1930 M. W. N. 249 F. B.

Charges, joinder of.

—where the charges were three in number but really four in substance but all the allegations were there and the accused were in no way prejudiced, held that the trial was not vitiated. 48 C. L. J. 534 : 113 I. C. 851 : 1929 Cal. 80 : 30 Cr. L. J. 241.

Chemical examination of blood stained exhibits.

—in a trial for murder where part of the prosecution story is that blood stained clothes were recovered and sent to the Chemical Examiner, it is essential to prove that ordinary diligence was exercised in despatching the goods without delay. There must also be evidence concerning the parcels which reached the Chemical Examiner with those which were despatched. This is not a mere technical defect. 26 Cr. L. J. 1420 : 26 Punj. L. R. 748 : 89 I. C. 844.

Child's testimony.

—there is no more dangerous witness than a young child. Any mistakes or discrepancies in their statements are ascribed to innocence or failure to understand, and undue weight is often given to what is merely a well taught lesson. Children have good memories and are easily taught stories and live in the belief that they become convinced that which they have been told. 878 : 32 Cr. L. J. 48 :

1930 Cr. C. 946

Civil case and Criminal case, distinction between.

—it is the duty of every criminal Court to get to the bottom of a case and to see that every scrap of relevant evidence is brought before it and that justice is done. It may be possibly different in the case of a civil court trying a civil suit, where it is the duty of the parties to place their case as they think best before the Court. 43 A. 283 : 19 A. L. J. 196 : 22 Cr. L. J. 210 : 60 I. C. 322.

—unlike a civil suit in which the court is confined more or less to the pleadings, in a criminal case before a conviction is recorded it always has to be seen whether the proved or admitted facts bring the case within an exception which takes it out of the offence defined. The burden of proving such facts is of course on the accused. 56 C. 1013 : 33 C. W. N. 446 : 1929 Cal. 340.

Miscellaneous cases—General principles under the criminal law—*contd.*

Civil dispute, duty of Magistrate.

—parties should not be put to a lot of trouble in the criminal Courts when the case is really one of a civil nature. 72 I. C. 369: 1923 Lab. 329 24 Cr. L. J. 369.

—where a criminal case is launched on the basis of a civil dispute between the parties it would be proper for the Magistrate to consider whether or not the case was of a civil nature and if he comes to the conclusion that only a civil wrong had been committed *he should have said so and dealt with the case accordingly.* If on the other hand, he was of opinion, that a criminal offence had been committed, though he might refer to the evidence in a manner equa
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Magistrate is neither the one nor the other, it is liable to interference in revision. 38 C L J. 7 : 73 I C. 938 : 24 Cr. L. J. 714.

—a party should not be allowed to utilise the machinery of the Criminal Court to establish his title to property. Where the dispute between the parties is of a civil nature the civil adjudication should precede and not succeed, an adjudication by a criminal court. 71 I. C. 789; 24 Cr. L. J. 245.

Cognizable offence, locus standi of private prosecutor.

—In prosecution for cognizable offences, the private prosecutor has no position at all in the litigation, the Crown is the sole prosecutor and custodian of the peace. 2 Pat 708; 5 Pat L. T. 404; 25 Cr. L. J. 446 77 I. C. 734; 1924 Pat. 283.

Commission-examination of witness in criminal case.

the examination of a Pardat-
trial is a procedure which
never be adopted except for
398; 1922 Pat. 40: 65 I. C.

—the examination of an important witness on commission in the absence of both complainant and the accused is a most unsatisfactory mode of procedure in a criminal trial. 1926 Lab. 567; 95 I. C. 760; 27 Cr. L. J. 840.

Composition of criminal case, effect of.

Miscellaneous cases—General principles under the criminal law—contd.

Compromise pressed by Magistrate.

—It is highly improper for a trying Magistrate to send for a party to a case and then press upon him the desirability of a compromise as it raises a suspicion in the mind of that party that the Magistrate is showing favour to the other side. 1931 Lah. 32 : 130 I. C. 430 : 32 Cr. L. J. 537 : 1931 Cr. C. 96.

Conduct of accused after arrest or during trial is not evidence of guilt.

—there is no law by which an accused person can, either by words or gestures or by exposing himself to certain physical treatment, be made to implicate himself in the crime with which he is charged, when he is on trial. Such an idea is highly repugnant to the proper administration of justice. 3 Pat. L. T. 526 : 1922 Pat. 73 : 68 I. C. 958 : 23 Cr. L. J. 638 : 4 U. P. L. R. (Pat) 1.

—where a Magistrate wound up his judgment by saying "his appearance and the manner of his speech are such that I have no doubt that he committed the offence," held that this was in itself sufficient to condemn the whole judgment. 65 I. C. 625 : 23 Cr. L. J. 161.

—escape from custody after conviction is not a matter which should influence a court in arriving at the amount of punishment to be inflicted. 27 Cr. L. J. 944 : 96 I. C. 400 : 1926 Lah. 617.

—where there is no evidence against the accused except the fact that he had absconded and when arrested gave a false account of his movements, he cannot be convicted of the offence with which he is charged. 1927 Pat. 257 : 8 Pat. L. T. 566 : 101 I. C. 881 : 28 Cr. L. J. 497.

Confession, exculpatory, evidentiary value of.

—where there is no other evidence to show affirmatively that any portion of the exculpatory statement in the confession is false, the court must accept or reject the confession as a whole and cannot accept only the inculpatory element as inherently incredible. 1931 All. 1 : 129 I. C. 258 : 1931 Cr. C. 1 : 32 Cr. L. J. 362 : 1930 A. L. J. 1481. F. B.

Confession implicating co-accused

—a confession implicating a co-accused requires corroboration if the co-accused is to be convicted on it. 1930 Pat. 385 : 123 I. C. 393 : 31 Cr. L. J. 492 : 1930 Cr. C. 767.

Conflicting evidence, Court is to find out truth.

—it is not necessary that the case started by the complainant must be the one which the court should find proved, before it arrives at a conclusion of the guilt of the accused. The court is not bound by all the statements of the complainant. Its duty is to find out the truth in the midst of the conflicting evidence. 14 Bom. L. R. 135 : 1 Bom. Cr. C. 76 : 14 I. C. 764 : 13 Cr. L. J. 300.

Miscellaneous cases—General principles under the criminal law—contd.

Conflicting theories, which should prevail.

—where the court is unable to say which of the two theories is the more likely one, it is bound to take the view which is most favourable to the accused. 1930 Sind 99: 120 I. O. 520: 1930 Sind 24: 31 Cr. L. J. 117: 1930 Cr. C. 292.

Consent of the accused does not validate the irregular proceedings.

—where a criminal trial takes place under a procedure which is not authorised by law, even the consent of the accused and their counsel does not validate the proceedings. 4 Lah. 376.

Conspiracy case, effect of acquittal of some of the accused.

—so far as the acquittal of a conspirator in a subsequent trial is concerned it is now settled that it forms the ground of a reversal of a conviction of one tried before. On the other hand the conviction of the latter is a perfectly good one at the time that the judgment is pronounced against him and all the legal consequences of a valid conviction follow from it. 29 C. W. N. 260: 41 C. L. J. 87: 1925 Cal. 501: 86 I. C. 38: 26 Cr. L. J. 662.

Constructive possession, doctrine of, application in criminal cases

—the doctrine of constructive possession is to be very cautiously applied specially in the department of criminal jurisdiction. 18 C. W. N. 309: 18 C. L. J. 514: 15 Cr. L. J. 4: 22 I. C. 146.

Contributory negligence.

—the plea of contributory negligence has a distinct and recognised place in the Law of Torts, but finds no place in an indictment for criminal negligence. 1925 Sind 233: 16 S. L. R. 199.

Conviction, meaning of.

—a conviction is the judgment of a legal tribunal adjudicating a person guilty of a criminal offence. 1930 Pat. 274: 9 Pat. 131: 125 I. C. 792: 31 Cr. L. J. 958: 11 Pat. L. T. 261: 1930 Cr. C. 455.

Copy of approver's statement, if to be supplied to the accused.

—where the refusal of the court to supply a copy of the approver's statement and to supply a copy of each case and the extent of the prejudice to the accused in each case must determine the legality or illegality of the trial. 1928 Lah. 257: 9 Lah. 389: 108 I. C. 167: 29 Cr. L. J. 348: 9 A. I. Cr. R. 559.

Corroborative evidence, what is.

—where there are two sets of evidence neither of which alone can be accepted without corroboration they cannot each in its turn be taken to corroborate the other and join together so as to justify any court in acting on such evidence. 1927 Pat. 257: 8 Pat. L. T. 566: 101 I. C. 881: 28 Cr. L. J. 497: 8 A. I. Cr. R. 151.

Miscellaneous cases—General principles under the criminal law—contd.

Compromise pressed by Magistrate.

—It is highly improper for a trying Magistrate to send for a party to a case and then press upon him the desirability of a compromise as it raises a suspicion in the mind of that party that the Magistrate is showing favour to the other side. 1931 Lah. 32: 130 I. C. 430: 32 Cr. L. J. 537: 1931 Cr. C. 96.

Conduct of accused after arrest or during trial is not evidence of guilt.

—there is no law by which an accused person can, either by words or gestures or by exposing himself to certain physical treatment, be made to implicate himself in the crime with which he is charged, when he is on trial. Such an idea is highly repugnant to the proper administration of justice. 3 Pat. L. T. 526: 1922 Pat. 73: 68 I. C. 958: 23 Cr. L. J. 638: 4 U. P. L. R. (Pat) 1.

—where a Magistrate wound up his judgment by saying "his appearance and the manner of his speech are such that I have no doubt that he committed the offence," held that this was in itself sufficient to condemn the whole judgment. 65 I. C. 625: 23 Cr. L. J. 161.

—escape from custody after conviction is not a matter which should influence a court in arriving at the amount of punishment to be inflicted. 27 Cr. L. J. 944: 96 I. C. 400: 1926 Lah. 617.

—where there is no evidence against the accused except the fact that he had absconded and when arrested gave a false account of his movements, he cannot be convicted of the offence with which he is charged. 1927 Pat. 257: 8 Pat. L. T. 566: 101 I. C. 881: 28 Cr. L. J. 497.

Confession, exculpatory, evidentiary value of.

—where there is no other evidence to show affirmatively that any portion of the exculpatory statement in the confession is false, the court must accept or reject the confession as a whole and cannot accept only the inculpatory element as inherently incredible. 1931 All. 1: 129 I. C. 258: 1931 Cr. C. 1: 32 Cr. L. J. 362: 1930 A. L. J. 1481. F. B.

Confession implicating co-accused

—a confession implicating a co-accused requires corroboration if the co-accused is to be convicted on it. 1930 Pat. 385: 123 I. C. 393: 31 Cr. L. J. 492: 1930 Cr. C. 767.

Conflicting evidence, Court is to find out truth.

—it is not necessary that the case started by the complainant must be the one which the court should find proved, before it arrives at a decision. The court is not bound to find in favour of the complainant. Its duty is to find out the truth by weighing the conflicting evidence. 14 Bom. L. R. 34: 13 Cr. L. J. 300.

Miscellaneous cases—General principles under the criminal law—contd.*Conflicting theories, which should prevail.*

—where the court is unable to say which of the two theories is the more likely one, it is bound to take the view which is most favourable to the accused. 1930 Sind 99 : 120 I. C. 520 : 1930 Sind 24 : 31 Cr. L. J. 117 : 1930 Cr. C. 282.

Consent of the accused does not validate the irregular proceedings.

—where a criminal trial takes place under a procedure which is not authorised by law, even the consent of the accused and their counsel does not validate the proceedings. 4 Lab. 376.

Conspiracy case, effect of acquittal of some of the accused.

—so far as the acquittal of a conspirator in a subsequent trial is concerned it is now settled that it forms the ground of a reversal of a conviction of one tried before. On the other hand the conviction of one at the time that the acquittal of another is a legal consequence of a conspiracy. W. N. 260 : 41 C. L. J. 87 : 1662.

Constructive possession, doctrine of, application in criminal cases.

—the doctrine of constructive possession is to be very cautiously applied specially in the department of criminal jurisdiction, 18 C. W. N. 309 : 18 C. L. J. 514 : 15 Cr. L. J. 4 : 22 I. C. 148.

Contributory negligence.

—the plea of contributory negligence has a distinct and recognised place in the Law of Torts, but finds no place in an indictment for criminal negligence. 1925 Sind 233 : 18 S. L. R. 199.

Conviction, meaning of.

—a conviction is the judgment of a legal tribunal adjudicating a person guilty of a criminal offence. 1930 Pat. 274 : 9 Pat. 131 : 125 I. C. 792 : 31 Cr. L. J. 958 : 11 Pat. L. T. 261 : 1930 Cr. C. 455.

Copy of approvers' statement, if to be supplied to the accused.

—whether the trial is vitiated by the refusal of the court to supply the accused with a copy of the approver's statement and to allow the cross-examination of the approver with reference to that statement must be decided on the facts of each case and the extent of the prejudice to the accused in each case must determine the legality or illegality of the trial. 1928 Lnh. 257 : 9 Lab. 389 : 103 I. C. 167 : 29 Cr. L. J. 348 : 9 A. I. Cr. R. 559.

Corroborative evidence, what is.

—where there are two sets of evidence neither of which alone can be accepted without corroboration they cannot each in its turn be taken to corroborate the other and join together so as to justify any court in acting on such evidence. 1927 Pat. 257 : 8 Pat. L. T. 566 : 101 I. C. 881 : 28 Cr. L. J. 497 : 8 A. I. Cr. R. 151.

Miscellaneous cases—General principles under the criminal law—contd.

Cost in criminal cases.

—there is no inherent power to award costs in criminal cases. There is no statutory authority to grant costs generally in criminal matters and where Criminal Procedure Code intends to confer the power of granting costs it does so in terms. In cases not so provided for, there is no jurisdiction to grant costs. 31 M. L. T. 342 : 43 M. L. J. 369 : 1922 M. W. N. 579. 1922 Mad. 502 : 68 I. C. 615 : 23 Cr. L. J. 583 : 45 M. 913 F. B. But the Privy Council have power under the statute to grant costs in criminal cases. *The same case.*

Counsel cited as witness need not be excluded from Court-room.

—the rule as to exclusion of witnesses from court until they have been examined does not apply to counsel appearing for parties in the case. There may be circumstances which may make it desirable for a counsel cited as a witness in the case not to appear, but they do not render his appearance illegal. 1921 M. W. N. 440 : 41 M. L. J. 158 : 44 M. 916 : 62 I. C. 828 : 22 Cr. L. J. 588.

Counsel's admission, effect. See "Admission of counsel, effect"

Counsel's duty.

not to struggle to obtain rather as ministers of
as advocates. 33 O. W.
29 Cr. C. 228 : 119 I. C.

Counter-affidavit, admissibility of.

—a counter affidavit is admissible for the purpose of deciding whether a complaint is sustainable. 35 O. W. N. 690 : 1931 Cal 344 : 53 O. L. J. 184 : 131 I. C. 262 : 1931 Cr. C. 408.

Criminal proceeding, object of.

ings is not the compensa-
of the laws of the State.
789 : 11 Pat. L. T. 772 :

Cross-cases, trial of.

—in the trial of counter cases each case has to be decided accor-
The law does not allow an accused person

925 Cal. 1260.

Cross-cases, simultaneous trial.

—the simultaneous trial of a case and a counter-case is not illegal. Where the judgment on each case is based on findings

Miscellaneous cases—General principles under the criminal law—contd.

arrived at entirely upon the evidence in that case without any reference to the evidence in the other case the simultaneous trial cannot be said to have prejudiced the parties. 1 Pat. L. T. 499; 21 Cr. L. J. 739; 58 I. C. 243. But the Calcutta H. C. has recently held that there is no provision in the Cr. P. Code for trying two cross-cases at the same time before the same jurors. 54 C. L. J. 146.

(Cross examination, arbitrary limit of 5 minutes for the same is illegal)

—where the Magistrate set up an arbitrary limit of 5 minutes for the cross-examination of witnesses the proceedings are illegal. 34 C. L. J. 172; 62 I. C. 412; 22 Cr. L. J. 524.

Cross-examination by accused

—where owing to the misinformation as to the date of commencement of trial no pleader represented the accused on the first day and the prosecution witnesses who were examined on that date were not cross-examined, though accused did put some questions to them a request by the pleader who appeared on the subsequent day to have the said prosecution witnesses recalled for cross-examination should be granted. A refusal by the Sessions Judge to do so was held to be an improper exercise of discretion. 5 Pat. L. J. 706; 22 Cr. L. J. 219; 60 I. C. 331.

—it is clear right of the accused to cross-examine prosecution witnesses before the committing Court makes up its mind as to whether there is a case to be committed. 57 C. 945; 128 I. C. 802; I. R. 1931 Cal. 98; 32 Cr. L. J. 182; 1930 Cr. C. 1154; 1930 Cal. 754.

Cross-examination by court.

take up the role of a
ne witnesses and elicit
8 I. C. 852; 26 Cr. L.

J. 100.

Cross-examination, object of.

—the object of cross examination is not to produce startling effects but to elicit facts which will support the theory intended to be put forward. 48 C. L. J. 307.

Cross-examination of the accused by court, what amounts to.

—where the accused having put forward a defence version according to which a certain incident was alleged to have taken place at a certain spot the Magistrate tested their version by asking them individually to point out that spot and relying on his observation that they did not at all point out the same place discredited their version, held that the procedure amounted to cross-examination of the accused and was not proper. The Magistrate's impressions when he had not subjected himself to cross-examination were unsafe as a basis for discrediting the accused's version. 1922 Lah. 456; 23 Cr. L. J. 431; 67 I. C. 591.

Miscellaneous cases—General principles under the criminal law—contd.

... 457 I. P. C. the defence story took them point out in Magistrate verged dangerously near cross-examining the accused. 67 I. C. 591 : 23 Cr. L. J. 431.

Daily fine.

—it is had in law to impose daily fine in anticipation of the commission of an offence, for at the time the charge was laid against him no such offence had been committed. 82 I. C. 717 : 25 Cr. L. J. 1357 : 6 Pat. L. T. 204 : 1925 Pat. 322.

Deaf but literate witness must be examined.

—failure to examine a witness who though deaf could read and write is a material irregularity which vitiates a trial. 73 I. C. 784 : 24 Cr. L. J. 688. (Cal.)

Defence must be disclosed.

—a complainant has an absolute right to know exactly the allegations or charges upon which the opposite side are going to rely and they must be put to him or to his appropriate witnesses clearly, specifically and with the utmost plainness so that he may have an opportunity of admitting them wholly or in part or denying them wholly or in part, and of calling witnesses to rebut such The practice of suppressing the of having them rebutted is 1928 All. 222 : 26 A. L. J.

—but it has been held by the Calcutta H. C. that in a criminal

cannot be said that the accused cannot plead private defence merely because they did not put it forward in their statements. 51 C. L. J. 339 : 1930 Cal. 442 : I. R. 1930 Cal. 839 : 127 I. C. 263 : 1930 Cr. C. 750.

Defence, preparation of.

—the accused should be given every opportunity to prepare his defence and not be hampered. 35 C. W. N. 547.

Delay in recording statements by police.

—whatever may be the explanation of the Police to record late the statements of the principal witnesses for the prosecution, the defence is entitled to ask that the evidence of these witnesses should be discarded, inasmuch as there was sufficient time and opportunity for their being tutored. 3 Pat. L. T. 413 : 23 Cr. L. J. 421 : 67 I. C. 581 : 1922 Pat. 348 : 44 P. L. R. (Pat.) 53.

Miscellaneous cases—General principles under the criminal law—*contd.*

Delay in trial effect of.

—where the trial had been unduly prolonged and the accused had been subjected to severe strain, anxiety and mental suffering thereby and the delay was not all due to the accused, this might be taken into consideration in passing sentence on the accused on his conviction. 27 C. W. N. 821: 1924 Cal. 18.

—procedure resulting in a long delay of about 3 years is defective though not illegal. 1923 Cal. 7225, 24 C. W. N. 467 *Dist.*

—delay in the disposal of criminal cases should be avoided in cases where identification is a material issue. 104 I. O. 705: 23 Cr. L. J. 865. 1923 Pat. 59: 9 Pat. L. T. 217: A. I. Cr. R. 29.

—where the records in a criminal trial were untidy and slovenly and the proceedings were allowed to drag on indefinitely, the parties appearing or not as it suited their convenience, held that the conduct of the case by the Magistrate was reprehensible. 35 C. W. N. 865.

De novo trial, prior proceedings if wiped out.

—*Quære.*—whether the effect of a *de novo* trial is to wipe out all previous proceedings. 55 M. L. J. 503: 1923 M. W. N. 589: 1928 Mad 1147.

Deposition of accused in civil if can be used in criminal case.

—where the accused in a case of forgery and conspiracy had previously deposed in a civil court as to the genuineness of the document, held that though the statement could not be used as confession, the jury if independently satisfied that the documents are not genuine, the evidence is to be regarded as having high evidentiary value upon the question of intention whether or not they are in conspiracy. 1929 Cal. 539: 1929 Cr. C. 194.

Deposition of accused in civil if can be used in criminal case.

—where the accused in a case of forgery and conspiracy had previously deposed in a civil court as to the genuineness of the document, held that though the statement could not be used as confession, the jury if independently satisfied that the documents are not genuine, the evidence is to be regarded as having high evidentiary value upon the question of intention whether or not they are in conspiracy. 1929 Cal. 539: 1929 Cr. C. 194.

Documents found in possession of accused, admissibility of.

—in order to render documents found in the possession of a person admissible against him as proof of their contents, it is necessary to show that such person has in some manner identified himself with or in other words, has, by any act, speech or writing, manifested an acquaintance with and knowledge of the contents of all or any of the documents. The rule would apply more strongly where, as in this case, some of the papers and letters were received by and others written by, the person against whom they are sought to be used. 39 C. 119: 13 Cr. L. J. 433: 15 I. O. 65, 37 C. 467 *Fol.*

—no criminal court is justified in brushing aside the documents to which the accused are parties when the accused themselves file those documents in court along with their statements. 55 M. L. J. 624: 1923 M. W. N. 782: 1923 Mad. 1135: 28 L. W. 509: 112 I. C. 565: 29 Cr. L. J. 1041.

Miscellaneous cases—General principles under the criminal law—contd.

Dropping proceedings

—it is for the Crown to consider whether the case is a fit one in which the proceedings should be allowed to go on, or whether it is proper to drop the proceedings. It is not competent for the High Court to quash the proceedings on the ground that the original complaint was made by the accused long ago and the accused is harassed thereby. 7 P. L. T. 383 : 95 L. C. 929 : 27 Cr. L. J. 849 : 1926 Pat. 302 : 5 Pat. 452.

Escape from custody.

—escape from custody after conviction is not a matter which should influence Court in arriving at the amount of punishment to be inflicted. 1926 Lah. 617 : 27 Cr. L. J. 944 : 96 L. C. 400

Evidence of near relations, value of.

—if the evidence of men who happen to be either relations or friends of a murdered man is to be discarded simply on the ground that on account of their relationship or friendship they cannot be considered as independent and reliable witnesses, then the court shall have to fall back either on the evidence of the enemies or of total strangers who, in many cases, would have no business to be present at the time when and at the place where the crime is committed. 1931 Lah. 38 : 130 L. C. 410 : 32 Cr. L. J. 522 : 32 P. L. R. 259 : 1931 Cr. C. 102.

Evidence in one case if can be used in another case.

—depositions taken in one case cannot be copied and used in another case. 36 C. L. J. 417.

—where two separate trials were held in respect of the same accused and the evidence taken in one case was used in the other case, the procedure amounted to a serious irregularity. 1928 Lah. 380 : 10 Lah. L. J. 389 : 29 Cr. L. J. 282 : 107 L. C. 766.

—but there is nothing illegal or irregular in having the depositions which were given by the defence witnesses when they were examined as prosecution witnesses in a counter-case filed as evidence on behalf of the defence with the consent of the prosecution, if these defence witnesses were called and examined in the presence of the accused and sworn to the truth of their previous deposition. 53 M. 775 : 1930 M. W. N. 410 : 1930 Cr. C. 577 : 1930 Mad. 505 : 58 M. L. J. 547 : 31 Cr. L. J. 119 : 127 L. C. 289.

Evidence of the prosecution in accused's favour.

—the evidence of the prosecution witnesses in favour of the accused cannot be disregarded simply on the supposition that they have been won over. 67 L. C. 827 : 23 Cr. L. J. 475 : 11 P. W. R. 1922.

Evidence partly believed, effect of.

—it is not correct proposition of law to lay down that where the Judge finds the Crown case to be substantially untrue, although there is a residuum of true and trustworthy evidence of

Miscellaneous cases—General principles under the criminal law—contd

the prosecution case with regard to some other charge incidental to the main charge nevertheless the accused must be acquitted even on this charge also. The application of the principle that a court disbelieving the prosecution theory in the main should not convict the accused, must depend upon the facts of each case. 4 Pat. L. J. 289; 20 Cr. L. J. 375. 50 I. C. 983.

—there is no such recognized principle that if the prosecution witnesses have been discredited in essential particulars, it is not open to the court nevertheless to accept a part of their story for convicting the accused. 1931 Pat. 384; 10 Pat. 590; 1930 Cr. C. 912

Evidence, recording of, by reference, is bad.

—where the Magistrate is asked to take the evidence of a material witness, instead of recording it himself, that the injury certificate, the

Evidence to be relied upon,

—the Crown is entitled to rely upon any material evidence of an incriminatory character found in the house of an accused person during house-search. 51 A. 864; 31 Cr. L. J. 356; 121 I. C. 819; 1930 Cr. C. 54; 1930 All. 38.

—where the evidence of the witnesses stands discredited on the crucial point it cannot be relied on on a less important point unless there is some strong independent corroborative evidence 1930 M. W. N. 723.

Executive consideration must be eliminated.

—It will not be supposed that a trying Magistrate will pay any attention to any direction given to him by the District Magistrate or other Magistrate extra-judicially as to how he should dispose of the case. 64 I. C. 511; 23 Cr. L. J. 31; 15 S. L. R. 149.

—a Magistrate exercising judicial functions has to divest himself of his executive powers and his judicial pronouncements should not be disfigured by an entry as required under the Police Manual particularly as it is based upon the Magistrate's personal impression drawn from irrelevant matters which the accused has no opportunity to meet 3 Pat. L. T. 239; 23 Cr. L. J. 371; 1922 Pat. 97; 67 I. C. 195.

the Court should keep judicial and executive considerations separate

victims to avert such calamity, such course was held to be a travesty of justice. 1925 Lah. 625; 89 I. C. 315; 26 Cr. L. 1339.

Miscellaneous cases—General principles under the criminal law—*contd.*

—it is a matter for surprise that a judicial officer occupying the position of a District Magistrate does not see the propriety of holding private conferences with the prosecuting officers in respect of a criminal case upon which he had to adjudicate. 1928 Lah. 125: 29 Punj. L. R. 14: 29 Cr. L. J. 212: 9 A. I. Cr. R. 505.

Expert evidence.

—it cannot be laid down as a rule of law that it is unsafe to base a conviction on the uncorroborated testimony of a finger print expert. The true rule seems to be one of caution, that is to say, that the Court must not take the expert's opinion for granted, but it must examine his evidence in order to satisfy itself that there can be no mistake and the responsibility is all the greater when there is no other evidence to corroborate the expert. 35 C. W. N. 863: 1931 Cal. 411: 1931 Cr. C. 593

—It is not correct to lay down that a conviction based on finger prints is absolutely unsafe. Where finger prints are clear an argument by way of deduction can be as sure a foundation for a conclusion as any based on direct evidence. 46 M. 715, 1923 Mad. 178, 1928 Pat. 129, 31 Cr. L. J. 877: 1930 Lah. 663: 125 I. C. 639, *contra*, 1922 Pat. 73, 1923 Lah. 622.

—evidence of comparison of handwriting is often extremely dangerous. Of all methods of proving a document that of comparison of handwriting by an inexperienced witness is the most unsatisfactory. The essence of a successful forgery is that it should resemble the original as closely as possible. The better the forgery the more difficult it is for any person who is not a handwriting expert to distinguish it from a genuine script. 47 C. L. J. 471: 26 Cr. L. J. 705: 1928 Cal. 309: 110 I. C. 449.

Extra-judicial direction should be ignored.

—it is the duty of the trying Magistrate to ignore extra-judicial directions given by a superior authority as to the disposal of the case. 64 I. C. 511: 23 Cr. L. J. 31: 15 S. L. R. 149.

Fine.

... it is wholly running him-family. The old depend in nce is of an aggravated type a sentence of imprisonment is obviously more suitable than fine 5 Lah. L. J. 271: 24 Cr. L. J. 278: 71 I. C. 998.

—a fine should not be imposed on an accused person which it is wholly impossible for him to pay without running himself and inflicting great hardship on his family. 8 Lah. L. J. 143: 93 I. C. 704: 27 Punj. L. R. 199: 27 Cr. L. J. 480.

—a sentence of heavy fine should not be awarded in a case where the accused is not a man of large means as the consequence

Miscellaneous cases—General principles under the criminal law—*contd*

of it will be that the women and children of the family will have to suffer 104 I. C. 705 23 Cr. L. J. 865 : 9 Pat. L. T. 217 : 1938 Pat. 59 9 A. I. Cr. R. 29

—whether a fine is severe or not depends to a large extent on the position of the person fined. 1931 Csl. 633 : 1931 Cr. C. 833

First information report, importance of.

—a discrepancy between a first information report and dying declaration makes it incumbent on the Court to examine both pieces of evidence with extreme care, but such a discrepancy does not render the dying declaration wholly unreliable. 71 I. C. 593 : 24 Cr. L. J. 177.

—first information reports are not substantial evidence of the facts recorded in them and a conviction cannot be based on them, they can be used to corroborate the witnesses who made them showing that they told the same story at the first possible occasion. If they told a different story in Court, it can be used to contradict them or discredit their testimony. But it is not legitimate for a court when witnesses tell a different story on the witness box and contradict the report made by them, to discard the evidence given by them on oaths and rely on the report. 74 I. C. 716 : 24 Cr. L. J. 812.

—the first information report should not be used as substantive evidence. It can only be used to corroborate or contradict the maker thereof. It cannot be used to contradict numerous other witnesses who are unanimous that a certain person was present at the place of the occurrence. 1928 Lab. 507 : 103 I. C. 162 : 29 Cr. L. J. 343 : 9 A. I. Cr. R. 567, 110 I. C. 590 : 29 Cr. L. J. 734 : 1928 Lab. 923.

—a first information report cannot be used as primary evidence of any fact in dispute but may be treated as corroborative evidence of facts which have to be established in the case. 1929 All. 916 : 1929 Cr. C. 644.

—a first information is not admissible in evidence at all, if in substance it is a confession to the Police. 1923 Neg. 251 : 73 I. C. 266 : 24 Cr. L. J. 570.

—the prosecution is bound to produce in court the First Infor-

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—where a first information report is given by a person who is not an eye-witness to the occurrence and it did not purport to give the names of all the culprits or even their exact numbers, the omission to mention some names is no ground to distrust the eye-witness. 1926 Lab. 369 : 27 Cr. L. J. 544 : 93 I. C. 1040, 111 I. C. 387 : 29 Cr. L. J. 835 : 1928 Lab. 880.

Miscellaneous cases—General principles under the criminal law—contd.

—where an identification parade is sought to be proved, the correct procedure is not to have the Magistrate who conducted the identification parade simply depose to a memorandum which is prepared at the time. The summary of the result of the identification should be given ordinarily as part of the oral evidence in the case. 1926 Lah. 378; 27 Cr. L. J. 555; 93 I. C. 1051; 6 Cr. R. 285.

Inference of complicity in crime between co-villagers.

—no inference of complicity in crime can be drawn from the fact of freindship between accused who are co-villagers and because of their being co-villagers it was quite natural that they should know each other. 1922 Pat. 83.

Inference of guilt

—in order to justify the inference of guilt, the inculpatory facts must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of his guilt. 1926 Lab 88; 7 Lab. 84; 27 Cr. L. J. 709; 6 Cr. R. 294; 94 I. C. 901; 27 Punj L. R. 583.

Injunction order by civil court

—a civil court has no jurisdiction to restrain party by an injunction from procuring his remedy under s. 488 Cr. P. C., 1930 Cal. 753; 129 I. C. 103; 22 Cr. L. J. 232; 1930 Cr. C. 1153.

Interpreter, prosecution witness acting as.

—a prosecution witness acting as interpreter is highly condemnable and opposed to elementary ideas of justice. The procedure is highly irregular. The irregularity is of such a nature as to border on illegality and the trial is vitiated. 1926 Cal. 922; 30 C. W. N. 696; 53 C. 659; 27 Cr. L. J. 805; 95 I. C. 469.

Joint trial.

—in the case of a joint trial of accused persons an alternative charge against one of them is legal. 1929 Cal. 298; 119 I. C. 139; 30 Cr. L. J. 1015.

—the legality of joint trial depends upon the accusation and not on the trial. 1929 Cal. 160; 116 I. C. 369; 30 Cr. L. J. 619; 1922 Cal. 107. *Rel. on.*

Judgment, copy of, of Bench of Magistrates.

—where a copy of the judgment of a Bench of Magistrates is applied for, the copy should contain the signatures of all the Magistrates. It is not sufficient to copy the signature of the Presiding Magistrate alone. 54 M. 252; 59 M. L. J. 674; 1930 Cr. C. 1123; 1930 Mad. 867; 129 I. C. 633; 1930 M. W. N. 787.

Judgment should contain the full name of the Magistrate.

—signing a judgment does not mean initialling but means the writing of the full name of the Magistrate or the Judge. 54 M. 252; 59 M. L. J. 674; 129 I. C. 633; 1930 M. W. N. 787; 1930 Mad 867.

Miscellaneous cases—General principles under the criminal law—contd

Judicial notice of facts within the personal knowledge of the Judge.

—a Judge can take judicial notice of matters of universal notoriety its general knowledge of daily life. But he cannot use from the Bench under the guise of judicial knowledge that which he knows only as an individual observer. Therefore he cannot import into a case his knowledge of the previous conduct of the accused. 1931 Sind 127. 25 S. L. R. 213. 132 I. C. 476; 1931 Cr. C. 719. 32 Cr. L. J. 923, (38 Cal. 153, 36 M. 168) *Ref.*

Jurisdiction.

—where a second class Magistrate comes to the conclusion on the evidence recorded by him that the case was one for trial by a first class Magistrate, the trial of that case by that Magistrate himself under the order of the District Magistrate is illegal and irregular and is without jurisdiction. 43 C. L. J. 214; 1926 Cal. 590; 27 Cr. L. J. 545. 93 I. C. 1041; 6 Cr. R. 264.

—where a Magistrate has once become properly seized of a case by transfer or otherwise he is seizer of the whole matter and a superior Magistrate cannot take action except under Chap XXXII or by withdrawal of the case to his own court. So where a prosecution for criminal breach of trust was launched in one court and second prosecution was launched as regards certain other items, it should be launched before the same Magistrate because he had seisin of the whole matter. 33 C. W. N. 454; 49 C. L. J. 378; 1929 Cal. 457. 1929 Cr. C. 91.

—jurisdiction of the Court is not affected by the error of office in describing proceedings. 1931 All. 305; I. R. 1931 All. 136; 32 Cr. L. J. 367; 1931 A. L. J. 117; 129 I. C. 264; 1931 Cr. C. 449.

Jury

which is being
th the accused
C. 111; 28 Cr.

*Letters Patent.**Cl. 15*

—it is doubtful whether an order refusing to grant a sanction to prosecute under s. 195 Cr. P. C. is a judgment within the meaning of cl. 15 of the Letters Patent. 24 Bom. L. R. 817; 23 Cr. L. J. 497; 68 I. C. 33.

Original Side of the H. C.
C. for a prosecution his order
inal Jurisdiction and is not a
of the Letters Patent. 1922
N. 594; 31 M. L. T. 287.

Miscellaneous cases—General principles under the criminal law—contd.

Cl. 26.

—the powers of the H. C. are limited under cl. 26 of the Letters Patent. Where there is no misdirection or other error as certified by the Advocate General the certificate is misconceived and the H. C. has no power to interfere with the conviction and sentence. Where the court is called upon to review a case under cl. 26 of the Letters Patent, it would accept as unquestionable the statement of the trial Judge as to what took place before him in court, (21 C. L. J. 377 : 10 B. H. C. R. 75 *Ref.*). Cl. 26 Letters Patent though silent as to the procedure to be followed by the Advocate General when he is called upon to grant a certificate, requires that the certificate should reflect the judgment of the Advocate General and is presumably granted in the interests of justice, after a consideration of all the available materials. If that judgment is founded on incomplete materials or inaccurate allegations, its weight is diminished. In a case where the error ascribed to the Judge depends on the evidence adduced at the trial, it is desirable that the notes of the evidence, as recorded by the Judge, should be laid before the Advocate General when he is asked to grant certificate. The certificate of the Advocate General should be granted after he has seen the Crown and has ascertained whose accuracy had been proved. 28 C. W. N.

—where a Judge in his discretion under s. 239 Cr. P. C. desires to try a number of accused jointly it is not a matter of interference with the powers of the Advocate General under cl. 26 of the Letters

appeared
General
held that
L. J. 106 :
F. B.
under ss.
submitted
forming
er cl. 26
C. 248 :

1931 Cal. 184. Sp. B.

—it is reasonably plain as a matter of construction of cl. 39 that the words "in any matter not being of criminal jurisdiction" means or orders which are made that no appeal lies to the H. C. sitting in criminal jurisdiction. The appeal was not maintainable.

58 C. 344.

—the H. C. cannot grant leave to appeal to his Majesty in Council from its decision in a criminal appeal either under cl. 41 of the Letters Patent or any other provision of law. 38 C. L. J. 406.

Miscellaneous cases—General principles under the criminal law—contd*Limitation period in appeal.*

—an application to the High Court against an order of the Court below should be made within sixty days from the date of the order. It is a question of practice no doubt, but the practice is uniform and only in special circumstances can it be departed from. The mere fact that the Division Bench of the H. C. issued a rule *ex parte* does not mean that the question of limitation cannot be subsequently gone into and that the rule should only be heard on the merits. 54 C. 394 : 103 I. C. 63 : 1927 Cal. 574 : 28 Cr. L. J. 639.

Local inspection by Magistrate, result must be recorded.

—it has been settled by authorities that a Magistrate must make a record of his inspection. Omission of the inspection notes prejudices the appeal. 27 : 71 I. C. 698 : 24 Cr. L. J. 656 : 110 I. C. 112 : 29 Cr. L. J. 656 :

—where there was no record at all as to what happened at the inspection and the Magistrate himself did not go to the witness box, a conviction based on the Magistrate's own knowledge of what took place is bad. 67 I. C. 591 : 23 Cr. L. J. 431.

—a note of inspection by the Magistrate should be placed on the record and the parties should be given an opportunity of being heard with respect to it. 3 Pat. L. T. 347 : 23 Cr. L. J. 440 : 1922 Pat. 296 : 67 I. C. 616.

Magistrate being complainant cannot try.

—a Magistrate ought not to make an order in any case in which he is even the nominal complainant. Such an order should be set aside and it will be for the Crown to consider whether it is expedient to move further in the matter. 16 Cr. L. J. 801 : 31 I. C. 317.

Magistrate's duty to disregard direction of extra-judicial authority.

See under "Executive considerations must be eliminated".

Magistrate's explanation must be in polite language.

—a Magistrate has no right in submitting an explanation to express himself in language of annoyance nor to make sneering references to a Judge of a superior Court, because nothing is gained by using language wanting in decorum and politeness, 51 C. L. J. 51 : 1930 Cal. 278 : 31 Cr. L. J. 1205 : 127 I. C. 267 : 1930 Cr. C. 358 : I. R. 1930 Cal. 843.

Magistrate's explanation should not refer to matter outside the record.

—the trying Magistrate is not entitled to make any suggestion or representation in the explanation which he may submit to the High Court of anything which is not founded on the record before him. 34 C. W. N. 256 : 1930 Cr. C. 613 : 1930 Cal. 379 : 32 Cr. L. J. 18 : I. R. 1930 Cal. 880.

Miscellaneous cases—General principles under the criminal law—contd.

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—where a Judge in his discretion under s. 239 Cr. P. O. desires to try a number of accused jointly it is not a matter of interference on a certificate of the Advocate General under cl. 26 of the Letters Patent. 38 C. L. J. 309 F. B.

—where there was misdirection to the jury and it appeared that the Advocate General and the Advocate General under the Letters Patent, held that it was fit case for interference under cl. 26 of the Letters Patent. 1121: 50 O. L. J. 106: 1929 Cal. 617 F. B.

—where the accused was prosecuted for offences under ss. 406 and 477 I. P. O. but it appeared that the Judge had misdirected the jury on the question of law, namely as to the ingredients forming the offence, held that it was fit case for interference under cl. 26 and the accused was acquitted. 35 O. W. N. 425: 1931 Cr. C. 248: 1931 Cal. 184, Sp. B.

—it is reasonably plain as a matter of construction of cl. 39 that the words "in any matter not being of criminal jurisdiction" govern all the classes of judgments or decrees or orders which are hereinafter in that clause mentioned. Held that no appeal lies to the Privy Council against a decision of the H. C. sitting in criminal appeal and that the application for leave was not maintainable. 58 C. 344.

—the H. C. cannot grant leave to appeal to his Majesty in Council from its decision in a criminal appeal either under cl. 41 of the Letters Patent or any other provision of law. 38 C. L. J. 406.

Miscellaneous cases—General principles under the criminal law—*contd*

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Magistrate's explanation should not refer to matter outside the record.

—a Magistrate is not entitled to make any suggestion which he may submit to is not founded on the record. Cr. C. 643 : 1930 Cal. 379 : 32

Miscellaneous cases—General principles under the criminal law—contd.

Major offence and minor offence constituted by same act.

—the proposition that where a particular set of acts or omissions constitute an offence under the general law and also under a special law the prosecution should be under the special law, is confined to cases where the offences are *coincident or are practically*

that assuming that the minor offence under sec. 64 of the Post Office Act was proved, it was not illegal to convict the accused for the major offence only. 1930 Pat. 622 : 9 Pat. 126 : 125 I. C. 770 : 11 Pat. L. T. 224 : 31 Cr. L. J. 934 : 1930 Cr. C. 1214.

—but where a special law such as the Salt law provides for a lighter and separate penalty for the abetment of the offence under the Act, the Court cannot impose a higher punishment on the accused by proceeding under s 117 I. P. O. 32 Cr. L. J. 104 : 128 I. C. 221 : 7 O. W. N. 895 : 1. R. 1931 Oudh 29.

Map, preparation of, in criminal case.

—a person who prepares a map for use in a criminal case ought not to put upon it anything more than what he sees himself. Particulars derived from witnesses examined on the spot should not be noted on the body of the map but on a separate sheet of paper annexed to the map as an index thereto 28 C. W. N. 995 : 1924 Cal. 1029 : 52 C. 172 : 84 I. C. 654 : 26 Cr. L. J. 350, 29 C. W. N. 842 : 1925 Cal. 909 : 26 Cr. L. J. 1298 : 89 I. C. 242.

Medical evidence is not always formal.

—it cannot be said as a general rule that medical evidence is always formal. 1922 Pat. 299.

—a Magistrate being untrained in medicine is not justified in embarking on an inquiry into medicine without expert assistance and his conclusions are unsound and valueless. 28 C. W. N. 579 : 83 I. C. 631 : 1924 Cal. 64.

—medical experts and others such as Judges who have to form opinions and exercise their judgment should have regard primarily to the facts and not draw upon their imagination. Otherwise the administration of justice would depend upon their individual idiosyncrasies and become unstable and unworkable. 32 C. W. N. 783.

—In cases of murder or of man slaughter it is unreasonable to expect the jury to convict if a proper exposition and explanation of the medical evidence is not given *visu voce* by a doctor who deal with the matter and satisfy the jury. A jury will sometimes find points which are really against the prosecution but which escape the notice of learned judges and public prosecutors. 56 : 566 : 33 C. W. N. 632 : 1929 Cal. 244 : 50 C. L. J. 1 : 119 I. C. 3 : 30 Cr. L. J. 1031.

Miscellaneous cases—General principles under the criminal law—contd

Medical examination of the body of the accused when illegal.

—it is not permissible under the Criminal Procedure Code to take hold of a prisoner forcibly and to examine his body medically without his consent. Such consent must be noted in the medical report 1931 Cal 601 1931 Cr C 753: 35 C. W. N 1212.

Minimising offence in order to try summarily.

—it is not right to minimise an offence for the Court to shut its eyes to a graver offence which on the facts found by it has been committed and to refrain from charging the accused with that offence and by such abstention to justify itself in trying the case summarily. 1929 All. 349. 51 A 540: 27 A L. J. 340: 116 I. C. 789: 30 Cr. L. J. 656.

Moral conviction is no substitute for legal proof.

—in a criminal trial moral conviction of the guilt of the accused is under no circumstances a substitute for legal proof 29 Pooj L. R. 388 1928 Lah. 724. 29 Cr. L. J. 697: 10 Lah. L. J. 311. 110 I. C. 329.

It is not the offence but the necessity to be proved.

It is not clear is no
told by the
182.
the real motive
if it is other-

—the question of adequacy of the motive is not a matter of much importance where the evidence that the accused committed the murder is clear 69 I. C. 449: 23 Cr. L. J. 721: 1922 Lah. 401: 4 U. P. L. R. (Lah). 89.

—a clear case made out by the prosecution cannot be disbelieved merely because the evidence of motive is not clear. 49 C. 358: 1922 Cal. 382: 71 I. C. 685: 24 Cr. L. J. 221.

—It is unnecessary to prove motive where there is clear evidence that the accused has committed the offence. 1925 Lah. 328. 7 Lah. L. J. 59: 86 I. C. 406: 26 Cr. L. J. 774.

If the facts are clear so far as the act complained of is concerned
48 C. L. J. 307: 30 Cr. L. J. 493

—If the facts are clear it is immaterial that no motive has been proved. The natural result of plunging a knife into another man's stomach is death or such bodily injury as is likely to result in death. The man who does such an act is presumed to intend the consequences. If he pleads others to

Miscellaneous cases—General principles under the criminal law—*contd*

In jury trials it may have some value but in trial before experienced Judges the prosecution and the defence stand on the same footing. 46 C. L. J. 368. For what is *prima facie* case, see 1931 Cr. C. 759. 1931 Cal. 607 under the heading "*Prima facie, meaning of*"

—where the evidence against the accused has been found to be false and unreliable the accused should be acquitted. The prosecution must prove its case in some other way in which W. N. 1211.

prosecution witness do the best in view of the available evidence to arrive at some theory as to what has actually happened. But where the prosecution story is found to be untrue in its fundamental aspects, it will be very difficult for the court to construct any theory on the unreliable version of the prosecution and the only course that may be open to the Court is used 1931 Pat. 516; 131 I. C. 216.

accused is not bound to offer any hypothesis for the death of the deceased with whose murder he stands charged, but where a set of facts is proved from which, having regard to human experience, only one reasonable inference

but to assist the court in arriving at the truth and for that purpose, to place before the court all the material evidence at its disposal. 44 C. 477; 24 C. L. J. 400; 21 C. W. N. 33; 38 I. C. 945; 18 Cr. L. J. 385 F. B.

—it is the duty of the prosecution to put all evidence before the court and the only valid excuse for not examining persons who were present on the spot and could have given important evidence would be that no reliance could be placed on their evidence. 50 C. 318; 1923 Cal. 517.

prosecution to call every witness who can testify whether they support the theory. He must call all those connected with the transaction in question. The court must decide whether the evidence is sufficient to place before the jury to whether it is merely a technical one but one founded on common sense and based 1929 Pat. 275; 8 Pat. 289; 10 Pat. L. T. 549; 115 I. C. 770; 30 J. 675; 1929 Cr. C. 62.

Miscellaneous cases—General principles under the criminal law—*contd*

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—where the evidence against the accused has been found to be false and unreliable the accused should be acquitted The accused is under no obligation to suggest any other way in which the deceased might have met his death. 1930 M. W. N. 1211.

—if the prosecution story as *alleged by the prosecution witness is found to be false*, the Court can by all means do the best in view of the available evidence to arrive at some theory as to what has actually happened But where the prosecution story is found to be untrue in its fundamental aspects, it will be very difficult for the court to construct any theory on the *unreliable version of the* . . . used 1931 Pat. 516: 131 I. C.

216.

accused is not bound to offer . . . deceased with whose murder . . . of facts is proved from which, having regard to human experience, only one reasonable inference

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witness who support the . . . all all those . . . transaction in . . . mation. The . . . police but the . . . M. W. N. 727. . . place before . . . s to whether . . . not merely a technical one but one founded on common sense and humanity, 1929 Pat. 275: 8 Pat. 289: 10 Pat. L. T. 549: 116 I. C. 740: 30 Cr. J. 675: 1929 Cr. C. 62.

Miscellaneous cases—General principles under the criminal law—contd.

—where a person who figured very largely in the evidence of the approver was not brought before the court as a witness or as an accused and there was no explanation forthcoming as to such a course, the court might, in such circumstances, properly draw an inference adverse to the prosecution. 1931 Lah. 408 : 132 I. C. 185 : 1931 Cr. C. 643

—the police are entitled, if they like, to rest their case on the evidence of two or three eye-witnesses but where it is obvious that there were many other people who could have come forward and given evidence in the matter but who are not called by the prosecution they should be called. Omission to do so is a circumstance against the prosecution. 1929 M. W. N. 537.

—the prosecution is justified in not calling as witnesses persons who though present at the occurrence are believed to be persons who would not speak the truth. 49 C. 358 : 1922 Cal. 382, 120 I. C. 674 : 31 Cr. L. J. 176 : 1930 Lah. 82, 1922 Lah. 1.

—it is not the duty of the Public Prosecutor to call or put into the witness-box for cross-examination a witness whom he believes to be a false or unnecessary witness specially where such witness was called at the former trial by the court and not as a witness for the Crown. 49 C. 277 : 1922 Cal. 461 : 23 Cr. L. J. 742 : 69 I. C. 630, 45 M. L. J. 846 : 1923 M. W. N. 782.

—the police are not bound to send up a witness who they think will not speak the truth. If the witnesses who have been called by the prosecution are otherwise worthy of credit, the court is not entitled to disbelieve them simply because some persons who could have thrown light upon the case have not been called. 74 I. C. 705 : 2 Pat. 309 : 24 Cr. L. J. 801 : 1923 Pat. 413.

—it is no part of the duty of the prosecution to examine witnesses whom it regards as false or unnecessary. It is always open to the defence to elicit in evidence why witnesses alleged to have some knowledge of the offence have not been examined and to comment unfavourably on the reasons advanced if they are unsatisfactory. 1927 Mad. 475 : 100 I. C. 531 : 28 Cr. L. J. 307, 16 A. 84 F. B., 49 C. 277, 45 M. L. J. 346, *Rel on*, 10 C. 1070 *Diss.* 42 C. 422 *Dist.*

—the prosecution is under no obligation to examine witnesses who it has reason to believe will not speak the truth. It is usual in such circumstances for the prosecution to tender such witnesses for cross-examination. The defence however is certainly entitled to claim that privilege. Having omitted to do so they cannot be permitted to make capital of the fact that the witness was not examined. 34 C. W. N. 170 : 125 I. C. 746 : 31 Cr. L. J. 918 : 1930 Cr. C. 134 : 1930 Lah. 134.

s-examina-
in murder
Mad. 906 :

Miscellaneous cases—General principles under the criminal law—contd

Public Prosecutor, duties of.

—a public prosecutor is supposed to possess greater legal qualifications than the Police officer who conducts prosecution in the committing Court and he ought to exercise his judgment on the evidence which the police wish to produce. 1925 Cal. 887 : 85 I C 830 : 26 Cr L J. 606.

Quantum of proof of a charge.

—in a criminal case it is sufficient for the prosecution to prove so much of a charge as constitutes an offence punishable by law. 55 C. 858 : 32 C. W. N. 319 : 1928 Cal. 675.

Quashing of proceedings, power of H. C.

—though the H. C. has power to quash a criminal proceeding in its early stage before evidence is recorded it should be very sparingly exercised in exceptional cases. 39 C L J. 236 : 1924 Cal 1018 : 82 I C. 266 : 25 Cr. L. J. 1253.

Remarks by Court against stranger.

—it is very undesirable that a Judge or a Magistrate should make remarks which are prejudicial to the character of a person who is neither a party nor a witness in the proceeding before him and who has, therefore, no opportunity of giving an explanation or defending himself against the remark. 23 Bom. L. R. 357 : 45 B. 1127 : 22 Cr. L. J. 335 : 61 I. C. 63 : 6 Bom. Cr. C 54.

Respectability of witness how far to be considered.

—where the word of respectable person is against the word

Pat. 88.

Restoration of property alleged to have been stolen.

—property is entitl
is the :
to execute a bond for the value of the property in the disposal of the title to the disputed property by a civil court. 44 C. L. J. 205 : 1929 Cal. 61.

Retrial.

—where the prosecution came to court with an incomplete case which so far as it went confirmed the defence, the prosecution is not entitled to ask for a retrial. 9 Pat. L. T. 723 : 1928 Pat. 293 : 107 I. C. 529 : 29 Cr. L. J. 258.

—where the trial Magistrate after coming to the conclusion that the prosecution story is doubtful, discharges the accused, mere circumstance that another view may be taken of the would not justify a retrial. 1930 Lah. 543 : 129 I. C. 300 : J. 302 : 31 P. L. R. 729 : 1930 Cr. C. 691.

Miscellaneous cases—General principles under the criminal law—*contd.*

—where a retrial is ordered by the appellate court, where it is possible, the retrial should be by some Magistrate other than the Magistrate who had already expressed a strong opinion on the guilt of the accused person. 24 Cr. L. J. 339

—where a retrial is ordered by the H. C. but it is not stated whether the same should be held by the same Magistrate or by some other Magistrate, it should not be presumed that it was the intention of the H. C. to direct that the retrial should be held by the same Magistrate. The matter is left entirely in the discretion of the Magistrate. 30 C. W. N. 1002 : 97 L. C. 948 : 1926 Cal. 1173 : 27 Cr. L. J. 1188

Revision by subordinate Courts of its own decision

—no subordinate court can sit in revision upon its own record and decide whether upon a certain view of the facts, its proceedings should be treated as null. Where a mistake is detected the matter must be referred to the High Court. 53 M. 870 : 129 I. C. 628 : 1931 Mad. 292 : 1930 M. W. N. 409 : 1930 Cr. C. 1055 : 1930 Mad. 1001.

Sentence.

—the period during which a person is kept in custody as an undertrial prisoner cannot be counted as part of a sentence, nor can it be added to the sentence as such. 69 I. C. 817 : 23 Cr. L.

the accused were
! mental suffering
to which the accused must in consequence have been subject were taken into account in mitigation of the sentence. 27 C. W. N. 821 : 1924 Cal. 18.

—greater discretion should be exercised by the magistrates Courts in making the penalty fit the crime and the practice of commencing petty offenders to the Sessions Court after three or four convictions should cease. Even if such persons are committed no vindictive sentence should be inflicted. A sentence of four years rigorous imprisonment for stealing purse containing Rs. 1-2-0 is highly excessive. 1924 Bom. 453 : 26 Bom. L. R. 434.

—in a case against a number of accused persons, where the evidence is the same against all, the sentence against each shall be the same. 1925 Cal. 581 : 84 I. C. 708 : 26 Cr. L. J. 356.

—in awarding sentence ultimate consequences of the criminal act should be considered. Thus where the injuries were apparently simple but were internal and subsequently were responsible for the death of the victim the court should inflict a sentence in consideration of the fact that the injuries resulted in the person's death. 44 C. L. J. 208 : 1927 Cal. 73 : 99 I. C. 39 : 28 Cr. L. J. 6.

—a deterrent sentence is warranted when a large body of men deliberately set out to defy the law. 119 I. C. 887 : 1929 Cr. C. 254 : 1929 Pat. 502, see also, 1931 M. W. N. 265.

Miscellaneous cases—General principles under the criminal law—contd

—a court should weigh the sentence with reference to the crime committed and the circumstance of the case. To say that the court should take into consideration the prayer of the accused in his petition that an appealable sentence should be passed, is wholly wrong. 58 C. 392.

—when a person of high position and one who has done good services to Government in the past falls a victim to temptation every body looks to see whether it is not true that there is one law for the rich and another for the poor and a court cannot lightly reduce the sentence in such a case to one far below that which should have been awarded to an ignorant and poverty-stricken offender who had in the same way fallen a victim to the temptation. 103 I. C. 797 : 28 Cr. L. J. 749 : 1927 Oudh 319.

—in a great majority of cases the plea used in defence is the stereotyped plea of enmity and it is characterised by a wanton disregard of truth and in spite of laborious attempts, no motive is established between the accused and the Crown witnesses including the complainant. It ought to be generally known that a false defence of this character has a tendency to aggravate the offence and is a factor which may affect the question of sentence. 1930 All. 277 : 124 I. C. 45 : 31 Cr. L. J. 630 : 1930 Cr. C. 445.

—there can be no question of leniency on account of the age of the accused when he is known to be 23 years of age and when he is convicted of offence under s. 304 (II), I. P. C. 33 C. W. N. 605 : 50 C. L. J. 176 : 1929 Cal. 785 : 1929 Cr. C. 439.

—in case of picketing of liquor shop, impropriety of vindictive sentence was shown. 55 B. 220 : 1931 Bom. 70 : 129 I. C. 346 : 32 Bom. L. R. 1506 : 1931 Cr. C. 78.

—plea of guilty will generally influence the court in awarding a lenient sentence, but the inability of the prosecution to produce the party who was wronged and who was only the important witness in the case is no ground for dealing with the accused leniently. 33 C. W. N. 599 : 49 C. L. J. 432 : 119 I. C. 301 : 1929 Cal. 747 : 30 Cr. L. J. 1038 : 1929 Cr. C. 395.

—where there is one offence punishable with two different provisions of law one punishment only can be lawfully imposed. 31 Punj. L. R. 73 : 121 I. C. 726 : 1930 Lah. 266 : 1930 Cr. C. 298 : 31 Cr. L. J. 290.

Sessions trial.

—it is desirable that shorthand notes of proceedings of Sessions Court should be maintained so as to ensure a full and accurate record of what happens in court. 28 C. W. N. 170 : 38 C. L. J. 411 F. B.

—a defective summing up to the jury, unless it causes a failure of justice is not ground for upsetting a conviction. 38 C. L. J. 309 F. B.

—where a deposition of a witness before a Magistrate differs from the deposition at the Sessions the former should

Miscellaneous cases—General principles under the criminal law—contd.

be preferred. 1928 Pat. 326 : 108 I. C. 81 : 29 Cr. L. J. 325 : 9 A. I. Cr. R. 545.

Single witness, conviction on the evidence of.

—a conviction based on the evidence of a single witness is not illegal but courts must see to it in such a case that the evidence is free from all doubt. 1925 Lah. 295 : 84 I. C. 436 : 26 Cr. L. J. 292, 51 Mad. 956 : 1928 Mad. 1186 : 56 M. L. J. 591 : 28 L. W. 575.

Stranger's property cannot be detained.

—criminal proceedings to which a person is not a party ought not to be made use of for detaining in court the property of such person, even though the offence under trial had something to do with that object. 73 I. C. 807 : 24 Cr. L. J. 695.

Substantial justice is not sufficient.

—in a criminal proceeding the question is not alone whether substantial justice has been done according to law. Legal forms must be strictly conformed to. 1925 Oudh 1.

Suspicion, conviction should not be based on.

the mere existence of suspicious circumstance against the
d beyond reasonable doubt is
54 I. C. 693 : 18 A. L. J. 87 :
Pat. 112 : 30 Cr. L. J. 835 :
120 I. C. 539 : 31 P. L. R.
391 : 31 Cr. L. J. 141 : 1930 Cr. C. 100.

—suspicion however grave cannot be substituted for proof in a criminal case. 1928 Lah. 272 : 9 Lah. 531 : 29 Cr. L. J. 481 : 29 Punj. L. R. 629 : 109 I. C. 209, 1923 Lah. 42 : 83 I. C. 503 : 26 Cr. L. J. 28, 27 Punj. L. R. 615 : 27 Cr. L. J. 1294 : 98 I. C. 190, and a
on the ground that there is very
used. 27 Punj. L. R. 615 : 27 Cr.
J. 514 : 109 I. C. 356 : 29 Cr. L. J.

Transfer of case, power of the Sessions Judge.

—the powers of transfer of the Sessions Judge are expressly set out in sec. 528 (1) Cr. P. C. and there is no further "inherent" power of transfer. 1931 All. 535 : 1931 A. L. J. 591 : 1931 Cr. C. 707.

Trial Court's duty to try all issues.

—the trial court should decide all the issues in order to save a remand. 2 Pat. 386 : 1923 Pat. 451.

—it is the function of the court to determine an issue upon the material before it and a litigant cannot be allowed to arrogate to himself the right to decide it. 1931 Lah. 473 : 132 I. C. 515 : 32 P. L. R. 498 : 1931 Cr. C. 697.

Miscellaneous cases—General principles under the criminal law—contd.

Trivial offence when to be punished.

—where the accused was found to be technically guilty of a trivial offence under s 342 I. P. C. but the Magistrate acquitted him since it was shown that the prosecution was inspired by motive other than the pursuit of justice, held that the Magistrate should have convicted the accused and imposed a nominal penalty and he ought not to have strained the evidence to support a verdict of acquittal. 1930 Pet. 241, 9 Pat. 113; 125 I. C. 134; 31 Cr. L. J. 789; 1930 Cr. C. 502.

Unsworn statement of witness cannot be used against accused.

—apart from special cases the unsworn statement of a witness so far as the maker in his evidence does not confirm and repeat it, cannot be used against the accused at all as proof of the truth of what it asserts. This means not merely that it is in itself insufficient proof but that it cannot be so used at all. It cannot be coupled with probabilities which suggest that the witness was more likely to tell the truth on the former occasion than in the witness-box so was to go to the jury as part of the proof that what was then stated was true. 35 C. W. N. 731 1931 Cr. C. 497; 131 I. C. 575; 1931 Cal. 401, F. B.

Witness should give their evidence in the witness-box.

—witnesses whether they are Government Officers or not should give their evidence in the witness-box or other place set apart for this purpose and it is not desirable that they should give their evidence on the dais by the side of the Magistrate 63 I. C. 461 22 Cr. L. J. 669, 3 U. P. L. R. (Lab.) 78.

Witnesses withholding information should not be believed.

—witnesses who kept silence for a long time about the incidents which they have deposed and who moreover, when first questioned by the police had denied all knowledge of the affair, are not entitled to have their testimony believed. 56 I. C. 210; 21 Cr. L. J. 418.

—but the mere fact that an eye-witness does not come forward immediately an investigation is begun is not by itself in this country necessarily a sufficient ground for rejecting his testimony. 32 P. L. R. 461.

Under-trial prisoner, complaint as to treatment in jail.

—when a under-trial prisoner complains to a court that he is not treated in accordance with the jail rules the court has jurisdiction to receive his complaint and pass necessary orders. not different in this respect 133 I. C. 59; 1931 Cr. C. 850;

MOTOR VEHICLES ACT (VIII OF 1914.)

S. 4. (Duty to stop vehicle).

—a police officer who is not engaged in regulating traffic has got the power, under s. 4, part (a), to stop the driver of a .

S. 4. (Duty to stop vehicle)—contd.

bus on the ground that the bus is overloaded and that he wishes to inspect it and check the license. 57 M. L. J. 457; 1929 M. W. N. 596; 30 L. W. 468.

of traffic does not necessarily or dangerously driving car, it in this sec. 97 I. C. 973; 28

S. 5. (Reckless driving).

—s. 5 refers to a person who is driving a car in a manner which would in ordinary circumstances be proper, but owing to the special condition of the road at the time of driving, was improper. It does not cover the case where a man is not on the right side of the road, which is always improper. 16 S. L. R. 147; 84 I. C. 253; 26 Cr. L. J. 253.

—the applicant who was driving his own motor car late at night, found a horse carriage a little ahead crossing from the left to the right of the road. As it was safe to pass the carriage in front of the left he tried to pass it on the left, but, when he was doing so, the carriage in front suddenly swerved again to the left, with the result, that the motor ran into it. Thereon the applicant was convicted under s. 2 of the Bombay Motor Vehicle Act, 1904, for driving his motor recklessly or negligently, held that the applicant's defence having been that the carriage towards his right

his course back to the the position of difficulty licant could not be said r within the meaning of ehicle on the left is no ut the inference arising butted by other circum-

stance appearing in the case. The rule of the road is not an invariable or inflexible rule, and a deviation from it may upon occasion be not only justified but actually necessary. 13 Bom. L. R. 126; 9 I. C. 945; 12 Cr. L. J. 167.

—it is not sufficient to absolve drivers of motor vehicles from consequences of rash driving merely to show that the person to whom or to whose property they have caused injury was himself negligent 1931 A. L. J. 770; 133 I. C. 601.

—where the accused drove his motor car while in an intoxicated state and as a result of rash driving a collision occurred, held that the series of acts constituting the transaction gave rise to an offence under s. 2 of the Motor Vehicles Act, 1904. He could also be convicted under the Motor Vehicles Rules, 1904, in the accused being negligent in the accused being 13 Bom. L. R. 636; 29 Cr. L. J. 167.

—driving at 20 miles per hour and passing driving where the road at the place is about 40 to 50 ft. wide and

S. 5.—(Reckless driving)—contd.

there is ample room for four cars to pass abreast and there is no traffic of any kind at the time except those cars. 1929 Rang 14: 115 I C 900 30 Cr. L. J. 539.

—separate sentences cannot be passed under s. 5 of the Motor Vehicles Act and sec. 337 of the Indian Penal Code, for they are the same offences. 1931 M. W. N. 397.

—the best way of stopping reckless driving of Motor Cars is for the court to exercise its powers under sub-sec. 2 of sec. 18 under which the court shall cause particulars of the conviction to be endorsed on the licence held by the driver and may cancel or suspend the licence 90 I. C. 320; 27 Bom. L. R. 1056; 26 Cr. L. J. 1536; 1925 Bom. 526.

—a person who had been a motor driver for more than 12 years during which period he had carried a good many certificates and had never been convicted for rash driving, was convicted under a 5 and sentenced to pay a fine and his licence was cancelled, held that the fine was adequate punishment and it was not necessary to cancel the licence. 23 A. L. J. 790; 83 I. C. 998; 6 A. 150 Cr.: 1925 All 798. 26 Cr. L. J. 1254.

S. 6 (Licensing of drivers.)

—where owner of a motor bus allowed his driver to drive his omnibus without a licence and was charged under s. 6 when he pleaded that he did not know that the licence had expired, he was guilty of an offence under s. 6, because he must assure himself before he entrusts his car to another person that he is licensed. 105 I. C. 674 : 28 Cr. L. J. 962; 1927 M. W. N. 852; 1927 Mnd. 1080; 53 M. L. J. 757. 51 Mad. 187.

S. 8. (Production of licence).

—If a person driving a motor vehicle does not produce his licence immediately when called upon to do so by a police officer he is guilty under this sec. The fact that the driver had taken out a licence but left it at home is not sufficient to exonerate him from the offence. The words "upon demand" are clear and can have only one meaning, namely, at once directly the demand is made. The reason of the rule is obvious: If a person driving a vehicle has not his licence with him and cannot produce it immediately and if he be

body to evade the Act
more by police officer
only inform the police
not inform them who
58 I. O. 148 : 21 Cr. L.

—the driving of a motor car by a properly licensed driver who omits to carry the license with him is not an offence. It is only the non-production of the license on demand by a police officer that constitutes the offence under this sec. 1922 Nag. 71: 65 I. C. 425: 23 Cr. L. J. 73.

S. 8. (Production of licence)—*contd.*

—Ss. 8 and 9 of the Motor Vehicles Act do not apply to permits under R. 24, but to the driving licence prescribed by s. 6 of the sec. and R. 22. Failure of a driver to produce on demand a permit issued to him under R. 24 is not an offence. 1928 All. 492: 26 A. L. J. 1381: 111 I. C. 127: 29 Cr. L. J. 799: 50 A. 876.

—no one is a driver within the meaning of this section unless he is actually driving. The police officer only can demand the licence, an order requiring the driver to attend a Magistrate's house or court with his license is illegal. 49 A. 754: 28 Cr. L. J. 492: 1927 All. 478: 101 I. C. 668: 25 A. L. J. 574.

—it cannot be said that a police officer cannot ask a motor driver to produce his licence on the private ground of a private person but can only do so when the driver drives the car on the public road. But this law must be administered with sympathy and firmness. 97 I. C. 48: 27 Cr. L. J. 1072: 7 Pat. L. T. 542: 1926 Pat. 446

S. 11. (Power of local Government to make rules).

—the expression "to ply for hire" as used in the motor vehicles plying for hire rules ordinarily means to exhibit a vehicle in such a way as to invite those who may desire to do so to hire it or to travel in it on payment to any member of the public, thereby soliciting custom. 32 Bom. L. R. 337: 1930 Cr. C. 455: 1930 Bom. 161, (1928 Mnd 166, 10 Lsh. 505) *fol.*

—where the accused was the owner of a motor-taxi-car in Calcutta and his driver improperly drove the car into a drain, thereby injuring the passengers, he was liable for any contravention of the rules committed by his licensee or servant during the period of the licence, 45 C. 430: 22 C. W. N. 72: 26 C. L. J. 37: 42 I. C. 601: 18 Cr. L. J. 985.

—under Rule 12 the only person who is responsible for having a board fixed upon the Car is the owner and not the person who from time to time, may have the use of the Car. 97 I. C. 48: 27 Cr. L. J. 1072: 1926 Pat. 446: 7 Pat. L. T. 542.

—when a prosecution is undertaken under rule 13 there should be independent and direct evidence indicating exactly the time at which the car has been observed being driven on the public road with defective lights. 97 I. C. 48: 27 Cr. L. J. 1072: 7 Pat. L. T. 542: 1926 Pat. 446.

—under Rule 13 cl. (1) of the United Provinces Motor Vehicles Rules, when a person drove a Motor Car with two lamps affixed on each side of the front portion of the car showing a white light in front, held that the rule was fully complied with and the conviction of the accused for the violation of the rule was bad in law. 16 A. L. J. 623: 46 I. C. 1004: 19 Cr. L. J. 860.

motor car goes from the
the purpose of turning,
vehicle, constitutes an
under the Madras Motor
vehicles Act 1907, corresponding to the rule 18 of the present Motor

S. 11. (Power of local Government to make rules)—*contd.*

Vehicles Rules, 1916. 1912 M. W. N. 539: 15 I. C. 487: 13 Cr. L. J. 487.

—the amendment of the rules by the Local Govt. limiting the duration of time for which a certificate was to be valid, is *ultra vires* as no power was given under a 11 to make rules for that purpose, 46 B 646: 24 Bom. L. R. 50: 23 Cr. L. J. 169: 1922 Bom. 42.

—Rules 10 and 17 of the Punjab Vehicles Rules made under this Act only apply to the driver or to a person using the car at the time it is being driven, and not to an absent owner, in whose absence his servant may drive his motor car without lights after the lighting up time. 47 I. C. 444: 27 P. R. 1918: 19 Cr. L. J. 928: 37 P. W. R. 1918

—where the owner of a motor lorry was not in the lorry when the driver drove it at excessive speed and where the owner had cautioned the driver not to exceed the regulation speed and to drive with due care and caution, held r. 16 of the Rules framed under s. 11 of the Motor Vehicles Act makes only the driver liable as it only contains a prohibition against driving at a greater speed than that stated in the Rule. As to rule 3 the owner of the lorry, under the circumstances of the case, cannot be said to have "caused or permitted" the lorry to be driven in contravention of Rule 16. and is not of the essence of usually liable for his servant's but not otherwise and he for liability for permit. can be shown that the a and assent, express or Cal. 985: 82 I. C. 137:

—Municipalities outside Calcutta cannot under Rule 19 of the Motor Vehicles Act, impose tax on motor vehicles plying for hire. 41 C. L. J. 566.

—Rule 19 of the Motor Vehicles Act was passed for the protection of the roads and a prohibition under the rule does not distinguish between private vehicles and vehicles plying on hire. 41 C. L. J. 566: 88 I. C. 1045: 1923 Cal. 1026: 26 Cr. L. J. 1269.

—Rule 22 applies only to a person who has got licence to drive in another province and not in the United Provinces. 49 A. 754: 1927 All. 478: 101 I. C. 668: 25 A. L. J. 574: 28 Cr. L. J. 492.

—R. 22 was made in order to provide for cases where people are injured and the words "If any person is injured" in R. 32 govern the whole of the rest of the clause and the other construction of the R. 32, viz., on the occurrence of any accident, if there is no police officer present, the driver or person in charge of the motor vehicles shall report the accident without delay at the nearest police station, though possible, cannot be accepted as correct. 27 A. L. J. 1044: 1929 All. 750: 119 I. C. 570: 30 Cr. L. J. 1085, 1929 Cr. C. 355.

S. 11. (Power of local Government to make rules)—*contd.*

—it is desirable to make the rules clear that there is some officer who is bound to inspect the car, 97 I. C. 847: 1926 Mad. 1084: 51 M. L. J. 446.

—where the petitioner was convicted and sentenced to a fine of Rs. 5 for having left a motor car in a public street unattended, thereby committing a breach of the bye-law No. 10 framed under cl. 18 of sec. 559 of the Calcutta Municipal Act which provides that "no person shall have a carriage or cart standing in a public street unattended" and this bye-law was enacted by the Local Govt. on the 6th January, 1905, whereas Rule 24 of the Motor Vehicles Act framed by the Local Govt. of Beagal provided that "no motor vehicle shall be left to stand in a street or other public place unless it is attended by a person holding a special licence granted under rule 15, except when the mechanism of such vehicle has been stopped" the question was whether the rule framed by the Indian Legislature has by implication repealed the bye-law made under the authority of the Local Legislature, held that the test to be applied in such cases is whether there is a repugnancy in the two provisions, that there is no real repugnancy between the two provisions, inasmuch as the rule framed by the Local Govt. under the Motor Vehicles Act in substance provides only for cases when the mechanism of the car was stopped, which the bye-law framed by the Municipal Corporation applies to all cases, and in each case no person shall leave a carriage or cart standing in the public place unattended. 25 C. W. N. 21.

—where the evidence showed that while the petitioner was driving his car one evening along a road it jumped over a parapet wall only 9 inches high and fell into a channel and the inmates of the car were slightly injured and the car was slightly damaged, there was no accident within the meaning of R. 27 (c) of the Motor Vehicles Rules framed under s. 11 (2) of the Motor Vehicles Act. The word "accident" is not defined in the Motor Vehicles Act or in any of the Rules framed thereunder. Ordinarily it means an event which takes place without one's foresight or expectation. 51 M. 504: 103 I. C. 909: 29 Cr. L. J. 461: 1928 Mad 364: 55 M. L. J. 320

S. 14. (Power of Governor-General in Council to make rules).

—rules 10 and 17 of the Punjab Motor Vehicles Rules apply only to the driver or to a person driving the car at the time it is being driven and not to an absent owner. The owner of a car is not therefore liable to be fined, because in his absence his servants drove his motor car without lights after lighting-up time. 1918 P. W. R. 37. 27 P. R. 1918: 47 I. C. 444: 19 Cr. L. J. 923.

S. 18. (Penalties).

—It is not abetment of the offence for the master to omit to give information to his servant, unless the omission was illegal, that

S. 16. (*Penalties*)—*contd.*

is to say, in disobedience to an obligation imposed upon him by law. 9 Bom. L. R. 159 : 5 Cr. L. J. 173, 9 Bom. L. R. 161 : 5 Cr. L. J. 176.

—a servant has no implied authority to engage a stranger to do work on behalf of his master so as to render the master liable for the stranger's acts except in a case of necessity. Where the driver in charge of a bus allowed a person having no licence to drive the bus without the knowledge of the owner of the bus the latter could not be convicted under s. 16. 47 C. L. J. 460 : 1928 Cal. 410 : 29 Cr. L. J. 694 : 110 L. C. 326 : 10 A. I. Cr. R. 414.

—where a car was driven by a Chauffeur of the accused who was the owner without a proper rear light, the facts being that though provision had been made for a rear light, yet the illumination on the particular occasion was not sufficient to render the registered number legible at a reasonable distance, the owner who was not then on the car cannot be responsible and cannot be convicted. In such and similar cases it would be nothing more than reasonable or just, in the first instance to point out to the driver (whether owner or servant) that the requirements of the law are not complied with.

and Rules except when a previous warning has been ignored or when public safety has in fact been endangered. 76 L. C. 564 : 2 Bur. L. J. 201 : 1 Rang. 600 : 1924 Rang. 63 : 25 Cr. L. J. 196, 38 C. 415 *Dist.*, 45 C. 430 *Ref.*

—where a driver of a motor lorry does not use the lorry in conformity with the condition specified in the road-certificate the owner of the lorry is guilty of an offence under s. 16. Where, therefore, a driver was found carrying 17 (while 10 could be carried under the road certificate) and one passenger was sitting on the mudguard which was prohibited the owner was liable although he was not present. 1930 Lab. 865 : 1930 Cr. C. 909, 38 C. 415, 45 C. 430, 1924 Cal. 985 *Rel. on* 27 P. R. 1918, 1928 Cal. 410, 1924 Rang. 63 *Dist.*

—there is no prohibition against the driving of a car by a

—a motor car which carries mails and also passengers is not exempt from the operation of the ordinary rules about licence for drivers and those restricting the number of passengers to be carried under the permit. 100 L. C. 1053 : 28 Cr. L. J. 397 : 29 Bom. L. 191 : 1927 Bom. 154.

S. 16. (Penalties)—contd.

—a Magistrate has no jurisdiction to suspend a permit to ply for hire. Rule 41 refers only to a cancellation or suspension of a driving licence 29 Cr. L. J. 771; 110 I. C. 803; 10 Pat. L. T. 429; 1929 Pat. 522.

—conditions of the permit apply to the licensed vehicles for the period of the licence irrespective of whether it was in use at the time as a carriage standing or plying for hire or the use was gratuitous. 1929 Pat. 522; 1929 Cr. C. 282.

—the word "ply" in a motor permit must be read to mean ply for hire. Where the driver used the motor vehicle for transporting himself and his relations across a road which was not mentioned in the licence, held that he was not plying for hire and that there was no contravention of the permit so as to render him liable to be convicted under s. 16. 1930 Oudh 251; 7 O. W. N. 464; 1930 Cr. C. 571.

—omission in a summons to specify the section of the Motor Vehicles Act or rules made thereunder, for breach of which a person is prosecuted, is a serious defect. 1928 All. 492; 29 Cr. L. J. 799; 26 A. L. J. 1381; 111 I. C. 127; 50 A. 876.

—where the owner of a motor car was sentenced to a fine on his plea admitting his guilt, under s. 16 of the Act for not having given information as to the death of a person by motor accident, held (1) that there was no such offence as that for which the owner was convicted either under s. 16 or under any other provision of the Act, (2) that the summons issued by the Magistrate having not contained the necessary particulars was invalid in law and consequently need not have been obeyed; (3) that the admissions to guilt by the plea did not operate as an estoppel or admission preventing the accused from impugning the validity of the proceedings; (4) that the practice of persons summoned absenting themselves and pleading "guilty" deserved condemnation and would really go to aggravate the offence. 26 A. L. J. 331; 1928 All. 261; 108 I. C. 230; 29 Cr. L. J. 357; 9 A. I. Cr. R. 341.

—R. 11 of the U. P. Motor Vehicles Rules is not applicable to cars registered outside united Provinces. 1930 All. 34; 1930 A. L. J. 527; 120 I. C. 272; 31 Cr. L. J. 40; 1930 Cr. C. 50.

S. 18. (Cancellation and suspension of licence and disqualification for obtaining licence).

—where a Magistrate in addition to imposing a fine for an offence under s. 16 of the Motor Vehicles Act suspends the licence of a motor-driver under s. 18 (2), the sentence is appealable and also open to revision by the H. C. 1922 Nag. 71; 65 I. C. 423; 23 Cr. L. J. 73; 9 N. L. R. 83 *fol.*

—the best way of stopping reckless driving of motor car is for the court to exercise its powers under sub-sec. 2 of section 18 under which the court shall cause particulars of the conviction to be endorsed on the licence held by the driver and may cancel or suspend the licence. 90 I. C. 320; 27 Bom. L. R. 1056.

POLICE ACT (V of 1861)*An Act for the Regulation of Police.*

Rule 1067 of the Police Regulations is *ultra vires* and illegal. 35 C. W. N. 547.

S. 4. (Inspector General of Police etc.)

—the District Superintendent of Police is Subordinate to the District Magistrate within the meaning of sec. 195 of the Cr. P. C. and where the Superintendent has referred sanction in respect of an offence under s. 192 I. P. C. for false information to the Police the District Magistrate has power to give sanction. The District Magistrate acts not as a court in such a case and his order cannot be interfered with in revision 45 A. 135: 24 Cr. L. J. 597: 1923 All 149: 73 I. C. 341.

S. 7. (Appointment, dismissal etc., of inferior officers.)

—sec. 7. Police Act does not deal with the punishment of offences made punishable by that Act; it merely deals with the powers of superior police officers in regard to the control of their subordinate officers. Under that sec. the controlling authorities are empowered to punish not offences but acts of negligence. In this case a police constable was dealt with by his departmental superiors under s. 7 of the Police Act for having accepted a bribe, held that he might also be tried and punished for the same offence under s. 163 I. P. C. 26 P. R. 1915 (Cr.): 31 I. C. 644: 52 P. W. R. 1915 (Cr.). 16 Cr. L. J. 788

—where a police officer against whom an order of suspension had already been made was ordered to leave the police lines until further orders and by reason of the later order the police officer was prejudiced in conducting his defence, held that assuming the order was legal it was an unreasonable one. The Police officer should on the other hand be given every opportunity to prepare his defence and not be hampered. 35 C. W. N. 547.

—s. 7 provides confinement for a term not exceeding 15 days as an alternative punishment for suspension. The section does not contemplate confinement in addition to suspension and certainly not indefinite confinement. To order a police officer to live in the police lines until further orders and not to leave the lines without permission is to confine him in those lines. Such an order is clearly illegal. 35 C. W. N. 547.

S. 8. (Certificates to Police officers)

—a police officer in Calcutta after suspension, does not continue to be a police officer. A police circular relied upon as law, ention matter C. 6?

S. 9. (Police Officer not to resign without leave or two months' notice.)

—the accused did not return to duty on the expiry of casual leave and was prosecuted and fined. During the pendency of the trial he was suspended. After trial he was re-instated and asked to join which he did not do. He was then tried and sentenced to imprisonment, held that the two were distinct offences and he was rightly convicted. 43 A. 22 : 17 A. L. J. 873 : 20 Cr. L. J. 475 : 52 I. C. 63.

S. 10. (Police Officers not to engage in other employment)

—the conduct of a Police officer in carrying on and conducting a shop comes within the purview of this section and can be convicted under s. 168 I. P. C. The words "any employment or office whatever" in this section are wide enough to cover the case of a Police officer who engages in trade. 43 I. C. 440 : 19 Cr. L. J. 152 (Cal.)

S. 13. (Additional police officers employed at cost of individuals)

—a Magistrate has no power to realise the cost of a police constable from an individual. 1 W. R. 15.

S. 17. (Special Police Officers)

—Special constables should not be appointed except in the three cases mentioned in the section, e.g. not for an apprehended increase in murders. 18 W. R. 67, or because there is a dispute about land. 35 C. 454.

—the only legitimate object of appointing special constables is to strengthen the ordinary police force by the addition of suitable persons. When such appointments are not made with the object above stated, proceedings under sec. 19 will not be permitted. So where the members of one party to a ferry dispute were appointed as special constables, but no instruction for the performance of any kind of police duty were issued to them and the circumstances showed that it was never really intended to employ them as police officers, held that their prosecution under s. 19 of the Police Act for refusing to serve as special constables was illegal. 43 C. 277 : 20 C. W. N. 855 : 17 Cr. L. J. 197 : 34 I. C. 309

—the failure of a person who was appointed special constable to attend at the police station to receive his belt and take charge of his appointment as special constable amounts to a refusal to serve within the meaning of sec. 19 of this Act. 43 I. C. 251 : 19 Cr. L. J. 91, 28 Cal. 411 Dist.

—an order under s. 17 appointing certain persons as special constables is an executive order and cannot be made the subject of revision under s. 435 of the Cr. P. C. 20 C. C. 229 : 42 I. C. 132 : 18 Cr. L. J. 900, (10 C. W. N. 82, 12 C. W. N. 727, 34 I. C. 309, 35 C. 454) *Ref.*

S. 19. (Refusal to serve as special Police Officers).

—a refusal by a person appointed as a special constable to accompany the Inspector who informed him of the appointment to accompany him to the station is no offence. 28 C. 411.

—but the failure of a person who was appointed special constable, to attend at the police station to receive his belt and take charge of his appointment as a special constable amounts to a refusal to serve. 43 L. C. 251; 19 Cr. L. J. 91, 28 C. 411 *Dist.*

—refusal to serve when the order of appointment is illegal is no offence. 35 C. 454

. . . : of appointing special constable
force by the addition of suitable
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19 will not be permitted. So
when the members of one party to a ferry dispute were appointed as special constables, but no instruction for the performance of any kind of police duty were issued to them and the circumstances showed that it was never really intended to employ them as police officers, held their prosecutions under this sec. for refusing to serve as special constables was illegal. 43 C. 277; 20 C. W. N. 885; 17 Cr. L. J. 197; 34 L. C. 309

S. 23 (Duties of Police Officers).

—there is no authority for the proposition that the police are empowered to prevent only cognizable offence. Some colour is given to the proposition by sec. 149 Cr. P. C. which provides only for the prevention of cognizable offences by the police. But sec. 23 of the Police Act appears to give wider powers for preventing offences in general. The word "offences" in that sec. is not defined in the Police Act and it does not appear to be governed by the definition of "offences" in sec. 40 of the I. P. C. enacted in the previous year. The Police Act was clearly intended to give the police force, then newly formed, extensive powers of preventing breaches of the law, and it is not outside their powers to stop a pug which is being held without a licence. 8 L. B. R. 329; 10 Bur. L. T. 17; 17 Cr. L. J. 347; 35 L. C. 523.

—s. 23 prescribes the duties of a police officer and one of the duties mentioned is to collect and communicate intelligence affecting the public peace. A report, therefore, made by a Sub-Inspector of police to a superior officer regarding suspicious persons residing within the jurisdiction, falls within the meaning of sec. 23 and a suit brought after a month from the date of notice is time barred. 1930 Lah. 592; 125 I. C. 379.

S. 24. (Police Officers may say informations etc.)

—the report of the police referred to in ss. 4 (h) and 190 (b) Cr. P. C. is not confined to reports under chapter XIV of the Code upon information lodged to the police but embraces all reports submitted under s. 24 of the Police Act. The duties of the police as to the laying information and moving the Court for action is irrespective of any information lodged to the police by any.

S. 24. (Police Officers may lay information etc)—contd.

referred to in Chapter XIV of the Cr. P. C. Hence it is not necessary that the police officer should be examined on oath before taking action. Even if it were necessary the omission of such examination is a mere irregularity which could be covered by examining him afterwards. 1 Pat. L. T. 446: 59 I. C. 41: 22 Cr. L. J. 9.

—the information if defamatory is not privileged. 4 P. W. R. 1910: 5 I. C. 714.

S. 25. (Police officers to take charge of unclaimed property and to dispose of it as directed by Magistrate.)

—timber claimed by a landowner as having been washed on to his estate by a river, is not unclaimed property. 9 W. R. 97.

S. 26. (Magistrate may detain property and issue proclamation.)

—until the property is declared under s. 88 Cr. P. C. to be at the disposal of the Government, any creditor of the owner may attach it in execution of his decree. Where at the time of the attachment and application for sale no action had been taken by the Government under ss. 87 and 88 Cr. P. C. no right accrued to the Govt. under s. 88 (7). 6 L. B. R. 57: 13 Cr. L. J. 15 I. C. 984: 5 Bom. L. R. 113.

S. 29. (Penalties for neglect of duty, etc.)*When punishable.*

—an order by the Superintendent of Police that the Sowars belonging to the Mounted Police Force should groom their horses is a lawful order regulating the duties of the men under his command which they are bound to obey and disobedience of it is punishable under this sec. 56 I. C. 497: 21 Cr. L. J. 465 (Pat.).

—sending an incorrect report of a local investigation, 15 W. R. 17, omission to give information regarding the commission of a riot, 21 W. R. 30 are offences punishable under this sec.

—when a senior officer permits a subordinate police officer to take out a first information report and dictate it to a stranger he commits an offence under this sec. 2 Pat. L. W. 188: 42 I. C. 598.

—the accused a police constable was ordered by his superior officers to join a fatigue party for the purpose of removing certain furniture from the office of the Inspector General of Police. He refused to do the work and was therefore convicted upon a summary trial of an offence under this sec. In revision by the Chief Court it was contended that the order given was not lawful because a fatigue duty was not a punishable duty. The Court held that a constable who had been ordered to perform duties to perform an order of this kind was not bound to obey it.

S. 29. Penalties for neglect of duty—contd.

works of this nature when necessary. In "extra guard, fatigue or other duties" in the table of punishments given in chap. XVI of the Police Rules, against serial No 8, the word "extra" qualifies all the subsequent words. It is not fatigue duty as such which is penal, but extra fatigue duty. It was further held that a summary procedure should not be employed in cases in which Govt. servants, no matter what their rank, are concerned as accused persons. 15 P. W. R. 1911 9 I. C. 831 : 12 Cr. L. J. 143 : 184 P. L. R. 1911.

—failure of Sub-Inspector of police to prosecute a person for an offence as ordered by the Superintendent of Police amounts to an offence under s. 29 1926 All. 562 : 95 I. C. 765 : 27 Cr. L. J. 845.

—where a Sub-Inspector of Police was proved to have without permission allowed the *mukteer* for the defence to see the case diary and take notes therefrom, held that the Police Sub-Inspector was guilty of an offence under s. 29 of the Police Act coupled with rules, and that the *mukteer* was liable to be convicted for abetment. 10 Pat. L. T. 703.

When not punishable.

—to be punishable there must be a deliberate and intentional violation of duty, 17 W. R. 34, mere negligence or rashness is not punishable 19 W. R. 7.

—the accused who were police constables were taking an under-

tables had orders to travel by camel cart and they committed no breach of the rule thereby. 83 I. C. 663 : 9 O. & A. L. R. 928 : 26 Cr. L. J. 103 : 1925 Oudb. 281.

—a police officer under suspension is not punishable for withdrawing from his duties without permission. 17 W. R. 12, 10 A. 459.

—a police officer is not punishable for not arresting a person against whom he does not believe there is sufficient evidence 26 W. R. 8.

—a police officer not doing extra drills ordered as a penalty is not punishable under this sec. 12 C. 427.

—a chief constable authorised to depute his subordinate to proceed to the place where a crime has been committed, does not commit an offence by not proceeding to the spot. 1 Agre. 1.

—a police officer was convicted under s. 29 of the Police Act for overstaying his leave. His defence was that he was detained by important private business of his own and therefore could join in time, held that in the circumstances of the case it not be said that he failed without reasonable excuse to

S. 29. Penalties for neglect of duty—*contd.*

himself to duty on the expiration of his leave, and the conviction should be set aside. 25 C. W. N. 403; 66 I. C. 67; 23 Cr. L. J. 247.

—where a police officer was served with one order of transfer and then with another order which he could reasonably have construed as cancelling the previous order and did not comply with the first order, he could not be convicted of wilful breach or neglect of a lawful order made by a competent authority. 1922 Pat. 207.

—a police officer, who on the expiration of the leave was really ill and was treated by a private medical officer and therefore did not report himself for duty, cannot be punished under s. 29. 27 Cr. L. J. 1111; 97 I. C. 423; 1927 Lah. 15.

—where the order under s. 7 of the Act is illegal no conviction under s. 29 can be sustained for disobeying such an order. 35 C. W. N. 547.

—before the police officer can be convicted of an offence under s. 29, it must be found that he is guilty not of mere neglect, but of deliberate and intentional violation of duty. Where therefore there is not even mere neglect on his part but above intentional violation of duty, offence under this sec. is not made out. 17 W. R. Cr. 34 *Rel. on.* The mere escape of a prisoner from lawful custody does not make the constable, in whose charge he was, guilty of an offence under s. 29 of the Police Act. 1927 Oudh 257; 103 I. C. 200; 28 Cr. L. J. 664.

—the expression "violation of duty" in s. 29 implies some-
thing more than to fail to perform a duty. It may under
omission but such omission
by law and it is the duty
ove that. 1928 Lah. 161; 29
L. J. 285; I. L. T. 40 Lah.

128.

—the expression "police officer" applies to all the members of the police force in whatever capacity they may be employed including constables. 1929 Lah. 325; 39 Cr. L. J. 635; 116 I. C. 611.

—a police officer doing his best to keep rioters out who is carried into a building by a rush of the very men whom he is trying to protect is certainly showing no cowardice up to the time building the persons
of cowardice so as to
Oudh 285; 5 C. W. N.

—S. 29 is really intended to punish intentional or wilful acts of the police officers as described therein and the expression "with-
drawal from duty" imports intentional refusal to perform
one's duty
escort an off
days. No or
There was some

S. 29. Penalties for neglect of duty, etc.—*contd.*

police officers had been given two days' holidays; held that he was not guilty under s. 29. 1929 Lah. 325 : 116 I. C. 611 : 30 Cr. L. J. 635. (6 C 625, 6 All. 495) *Rel. on.*

Jurisdiction and trial.

—the power of the court to punish a public servant for an offence against the law is not taken away simply because the offender has also been punished by his departmental superiors. 15 P. W. R. 1911 : 184 P. L. R. 1911 : 9 I. C. 831 : 12 Cr. L. J. 143.

—a Magistrate, and not a Sessions Judge can try an offence under this section, 1 W. R. 5, even though the trial be with respect to an offence cognizable by a Sessions Judge, on which there is an acquittal, 9 W. R. 36

—summary procedure should not be employed in cases in which Government servants, no matter what their rank, are concerned as accused persons. 15 P. W. R. 1911 : 184 P. L. R. 1911 : 9 I. C. 831 : 12 Cr. L. J. 143.

—the section gives no jurisdiction over European British subjects, 3 N. W. 128 or persons who are not police-officers. 10 C. L. R. 521.

—a Cantonment Magistrate may try without a complaint, but there must be a formal trial. 1 Agra 24. A District Magistrate is not, on account of his being the head of the police, debarred from trying an offence under the section for breach of the order of a Reserve Inspector of Police. 22 A. 340.

—R-261-A of the Police Manual is merely an enabling rule
 a prosecution
 Appellate Court
 lies. Where
 409 I. P. C.
 appeal altered
 held that the

S. 30. (Regulation of public assemblies and processions and licensing of same).

—the words of section 30 of the Police Act are sufficiently
 to issue a general notification
 convening or collecting assemblies
 without a licence. The terms
 to cover a prohibition without
 any limit of time. Resistance to such an order issued under the law is resistance to the execution of law or legal process within the meaning of sec. 141 I. P. C. 2 Pat. 134 : 1 Pat. L. R. 139 : 3 Pat. L. T. 585 : 68 I. C. 945 : 23 Cr. L. J. 625 : 1923 Pat. 1 F. B.

—this sec. does not empower the police officer to issue a general notice that anyone taking out a procession passing a mosque must take out a licence. It does not contemplate his taking any action until he is satisfied that it is intended to take out a procession which in the opinion of the Magistrate if

S. 30. (Regulation of public assemblies and processions and licensing of same)—*contd.*

could be made the subject of prosecution it should be entered in the license in clear and unambiguous terms and a license cannot be prosecuted for the violation of a condition which is so vague and indefinite that it is difficult to hold that the licensee was bound to obey the orders of the Magistrate and the local police as to the speed of the procession. 30 Punj. L. R. 261; 114 I. C. 716; 30 Cr. L. J. 371 1929 Lah 404.

—this sec gives the Police power to control processions. But the Police have no power to forbid the issue of a procession. The power to control does not include the power to forbid. If the applicant chooses to take out his procession after applying for his license and without waiting to acquaint himself with the conditions on which the procession is permitted to take place he does so at his own risk provided the license has been issued. The word "issue" signifies that if the Superintendent of Police signs the license and delivers it to some one with directions that it shall in due course be delivered to the applicant, it has been "issued"; if however the license had not been issued, he is only bound to see that the general law is not broken. 4 Pat. 795; 93 I. C. 986; 27 Cr. L. J. 522; 1926 Pat. 173.

—disobedience to an order under s. 30 (2) of the Police Act constitutes resistance "to the execution of any law" within the meaning of s. 141 I. P. C. 1931 M. W. N. 489.

—a notice issued by the police under s. 30 (2) of the Police Act prohibited all persons intending to organise or promote any procession from doing so without applying for a license. The accused did not organise or promote but merely joined in the procession; held, (1) that there was no disobedience of the police order and that the conviction under s. 32 was bad in law; (2) that where the police order is disobeyed, the proper procedure is that provided in s. 127 Cr. P. C. to order the procession to disperse and, when such order is disobeyed, to charge the persons for being members of an unlawful assembly. 1927 Pat. 191; 28 Cr. L. J. 443; 8 Pat. L. T. 245; 101 I. C. 475.

—there is no provision of law which makes it incumbent on an applicant for a license, to provide sureties or which authorises the officers concerned to demand such sureties. 1929 Lah. 404; 30 Punj. L. R. 261; 114 I. C. 716; 30 Cr. L. J. 371.

—the object of the license under the Police Act is to the preservation of public order. Consequently where the license contained a condition that no member was to carry a baton.

S. 30. (Regulation of public assemblies and processions and licensing the same)—*contd.*

the licensee must undertake to see not only that no member of the procession carried a lathi when the procession started but also that no one subsequently joined it with a lathi. 1928 Pat. 166 : 6 Pat. 763 : 106 I. C. 706 : 29 Cr. L. J. 114 : 9 Pat. L. T. 395.

—the District Superintendent of police under s. 30 is authorised to regulate the extent to which music may be used in the streets on the occasion of festivals and ceremonies, but a prohibition of every kind of music is not covered by the word "regulate." 51 A. 485 : 116 I. C. 814 : 27 A. L. J. 180 : 1929 Cr. C. 176 : 1929 All. 201 : 30 Cr. L. J. 696, 39 A. 131 *Rel. on.*

—where the Superintendent of Police passed an order under s. 30 of the Police Act on 18-7-1926 that no procession should be held without license and it appeared that it was intended for the ensuing Maharam festival and the accused were prosecuted for the breach of the said order on the ground that they joined a procession on 19-3-1927, held that the notification of 1926 though existing was not operative after the occasion which called for it had passed away and that consequently the conviction under s. 32 was not sustainable. 32 C. W. N. 162 : 29 Cr. L. J. 126 : 1928 Cal. 272 : 106 I. C. 718

S. 30A. (Powers with regard to assembly and processions violating condition of license).

—the fact that the provisions of sec. 30 A. of the Police Act give power to the Magistrates to stop any procession which violates the conditions of any license does not relieve the licensee from the duty of complying with the terms of the license. 1928 Pat. 166 : 6 Pat. 763 : 106 I. C. 706 : 29 Cr. L. J. 114 : 9 Pat. L. T. 395.

—s. 30 A merely gives an additional power to the officers concerned to stop the procession and then, if it does not disperse, to deal with its members as members of an unlawful assembly. It is not a condition precedent to the prosecution of the licensee for violation of the condition of the license that action should first be taken under s. 30 A. 1929 Leh. 404 : 30 Punj L. R. 261 : 114 I. C. 716 : 30 Cr. L. J. 371.

S. 31. (Police to keep order in public roads, etc.)

—the proof of general notification promulgating the order is not enough. It is the duty of the prosecution to prove by positive evidence that the accused had knowledge of the order. Since the District Magistrate has the general control over the matters referred to in ss. 30, 31 and 32 of the Police Act he has authority to make an order prohibiting particular kinds of traffic on a road liable to obstruction, during the day time. 63 I. C. 865 : 22 Cr. L. J. 705.

—though sec. 32 of the Police Act does not specifically refer to the issuing of orders under s. 31 of the Act it is the duty of the Police under s. 31 to keep order, which can be kept only by issuing orders, whether those orders be written or verbal or by signs, as in

S. 31. (Police to keep order in public roads, etc.)—contd.

the case of the direction of the traffic. 50 I. C. 489; 20 Cr. L. J. 813 15 N. L. R. 51.

—the object of ss 30 to 32 of the Act is that the public peace and order should be kept and orders passed under them including orders under s. 31, are not for the purpose of defying the rights of persons or of deciding who is in the right or who is in the wrong in the case of any dispute in a public place. The Police may issue and in the exercise of their discretion are bound to issue, any orders calculated to keep order and reasonably considered necessary, in the special circumstances of the occasion for that purpose. 50 I. C. 489 20 Cr. L. J. 813; 15 N. L. R. 51.

—It is a question of fact in every case whether the orders passed were issued in the exercise of the duty of keeping order and were reasonably considered necessary for keeping order. Moreover the duty of keeping order being cast upon the police, they are *prima facie* the best judges of what orders are necessary for that purpose, and there is a presumption that any order issued were issued in pursuance of duty. Everything depends on the circumstances in which the orders are issued. Held, therefore, that the police may issue orders under s. 31 for the preservation of order and that the disobedience of such orders is an offence under s. 31.

...ver to pass any order or "preventing obstruction". But the question whether a particular order could be held to be legally justifiable under the section must depend on the facts of each case. Where the processionists were not disorderly and all that was alleged was that there was some obstruction to traffic, which the Police could have easily prevented by ordering the processionists to make room for the traffic, held that under the circumstances the Sub-Inspector of Police exceeded his powers in giving an order for the dispersal of the procession. 1931 Lah. 33; 32 P. L. R. 52; 130 I. C. 425; 1931 Cr. C. 97; 32 Cr. L. J. 532; I. R. 1931 Lah. 297.

...may be an oral order by a police the public at any place of particular locality, orders had to levy tolls on animals

S. 32. (Penalty for disobeying orders issued under last three sections, etc.)

—though sec. 32 of the Act does not specifically refer to issuing of orders under s. 31 of the Act, it is the duty of the po

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—under this sec. the police have power to pass any order reasonably necessary for "keeping order" or "preventing obstruction". But the question whether a particular order could be held to be legally justifiable under the section must depend on the facts of each case. Where the processionists were not disorderly and all that was alleged was that there was some obstruction to traffic, which the Police could have easily prevented by ordering the processionists to make room for the traffic, held that under the circumstances the Sub-Inspector of Police exceeded his powers in the procession. 1931 Lah. 33 : O. 97 : 32 Cr. L. J. 532 : I. R.

—an order issued under s 31 may be an oral order by a police constable issued during the control of the public at any place of public resort. At a fair held in a particular locality, orders had been issued by the District Magistrate to levy tolls on animals and vehicles. A person driving in a bullock cart refused to pay and disturbed the order of the Police constable attending him for

constable is entitled to assume that the toll Collector was acting rightfully. 1926 All. 264 : 27 Cr. L. J. 24 : 91 I. C. 56.

S. 32. (Penalty for disobeying orders issued under last three sections, etc.)

—though sec. 32 of the Act does not specifically refer to issuing of orders under s. 31 of the Act, it is the duty of the

S. 32. (Penalty for disobeying orders issued under last three sections etc.)—contd.

under s. 31 to keep order which can be kept only by issuing orders, whether those orders be written or verbal or by signs, as in the case of the direction of the traffic. 50 I. C. 489: 20 Cr. L. J. 813: 15 N. L. R. 51.

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—an order was issued by the Superintendent of Police forbidding persons known as *jatrawalas* to frequent the railway station, ~~the station~~ and other public places at Moghal Sarai

e. The accused person was s. 32 of the Police Act of license. Held, that having section a general order like the conviction was illegal. 448: 35 I. C. 1008,

under s. 188 I. P. C. It is promulgated by a public and disobedience of it and such disobedience and it is

also necessary that either the Magistrate himself should file the complaint or sanction under s. 195 Cr. P. C. should have been obtained for the prosecution. 63 I. C. 865: 22 Cr. L. J. 705.

—where the order of the Police under s. 30 is illegal the accused cannot be convicted under s. 32 for disobedience of the order. 35 C. W. N. 187.

—where the Superintendent of the Police under s. 30 had prohibited processions without a license being taken out from the police and the accused took out an idol carried by four or five men and immersed it in the river and there was nothing to indicate that this was done in a formal and ceremonious manner, held by the H. C. that the finding of the Magistrate that the image was carried in a procession and that a license was required for the same was unsustainable. 1931 Cal. 128: 32 Cr. L. J. 482: 1931 Cr. O. 160: 130 I. C. 239: I. R. 1931 Cal. 367.

—the licensee assumes responsibility for the entire conduct of the procession and its component members and he cannot repudiate such responsibility by alleging that the violation of the conditions took place without his consent or even his knowledge or in his absence. If any member of the procession is guilty of the breach of the conditions of the license the licensee is liable to be prosecuted for it. 30 Punj. L. R. 261: 114 I. C. 716: 30 Cr. L. J. 371: 1929 Lah. 404.

S. 34. (Punishment for certain offences on roads, etc.)

—“open place” is not *ejusdem generis* with road, street or thoroughfare, and includes an open veranda. 27 C. 655.

—placing tambans in a public thoroughfare is an offence under this sec. 2 N. W. P. 5.

—the expression “exposes for sale” in clause (4) implies that any person who takes out of it has, to pay for it. Where the servant of a person sets up a board in a public place and keeps a jar filled with water so that any body can take water from it, he cannot be convicted under s. 34 (4), even if occasionally he used to receive tips. 92 I. C. 591; 27 Cr. L. J. 303; 1926 All. 288.

—the word “causes” in the fifth clause of the sec. means “allows to exist”. The fact of an act which is an offence under s. 34 of the Police Act being also punishable as a breach of sec. 110 of the C. P. Municipal Act, does not make a conviction under the Police Act illegal. 32 I. C. 495; 20 Cr. L. J. 671 (N).

—the word “rioters” in the sixth clause of the sec. is sufficiently wide to include the case of a person who creates a row in a public thoroughfare. 52 P. L. R. 1916; 29 P. W. R. 1916 Cr.; 36 P. R. 1916 Cr.; 17 Cr. L. J. 273; 34 I. C. 993.

—conviction under this sec. must be based on obstruction, inconvenience, annoyance, risk, danger or damage to residents or passengers by the act in question. 41 I. C. 340; 20 Cr. L. J. 452.

Pat. 246. In the latter case

middle of a road it must be

though it may be that no

— actually obstructed.

the accused was not guilty

act necessarily and logically

invicted of an offence under

1: 26 Cr. L. J. 1057; 1925

All. 440.

—held that “making water” is within the ambit of the expression “easing oneself” in s. 34, but where there was no

S. 36. (Power to prosecute under other law, not affected).

—the Police Act does not deal with the punishment Act. It merely deals with

so regard to the control of sec. the controlling authorities

are empowered to punish not offences but acts of negligence. Where a police constable was dealt with by his departmental superiors under s. 7 of the Police Act, for having accepted a bribe, he might also be tried and punished for the same offence under s. 163 I. P. C. 26 P. R. 1915 Cr.; 16 Cr. L. J. 788; 31 I. C. 644; 1925 P. R. 1915 Cr.

S. 42. (Limitation of actions).

—on the passing of the Limitation Act (IX of 1871) that part of sec. 42 of the Police Act which provides a period of three months for suits contemplated by it was repealed with the result that such suits become subject to the general law of limitation contained in the Limitation Act and the special provision of limitation contained in s. 42 Police Act ceased to be operative. 1930 All. 742.

—s. 42 refers to actions for "anything done or intended to be done under the provisions or under the general police powers." Where a suit has been brought against police officer for damages for something done in the exercise of his powers under Cr. P. Code, Police Act, s. 42 does not apply. 1930 All. 742, 31 I. C. 173 *fol.*

—a police officer has no power to arrest for an offence of selling liquor after hours when no report had been made about the commission of such offence. Sec. 42 of the Police Act is no bar to the trial of a Sub-Inspector for such an illegal arrest when the complaint was made against him four or five days after the alleged offence was committed. 1922 All. 264; 65 I. C. 433; 23 Cr. L. J. 81.

—the section does not apply to cases under s. 29. 7 N. W. P. 239.

—unless an objection as to want of notice is taken in the first court, a suit ought not to be dismissed. 8 W. R. 425.

—no notice is necessary where the defendant did not act in good faith in pursuance of the law, but took advantage of his position to commit illegal and tortuous acts, maliciously and without cause. 26 A. 220.

PROSECUTION AND DEFENCE CASE.**Prosecution case.**

—where the party comes into court with a story which cannot be believed as to its essential details, it is impossible to rely on a part of the story for the purpose of conviction. 47 I. C. 73; 19 Cr. L. J. 877; 5 Pat. L. W. 157; 1918 Pat. 288.

above principle that a court the main should not convict of each case 50 I. C. 982;

—it is not a correct proposition of law to lay down that where the court finds the Crown case to be substantially untrue, although there is a residuum of true and trustworthy evidence of the prosecution case with regard to some other charge incidental to the main charge against the accused, nevertheless the accused must be acquitted even on this charge also. *above case*

—the un-corroborated testimony of a witness which is disbelieved as to one accused cannot be the basis of a conviction as regards another accused in the same proceeding. 9 N. L. J. 194.

Defence Case.

—the statement made by an accused person cannot be presumed to be false. It is for the prosecution to prove that it is false, mere weakness in the defence story or even suspicious features in that story are not enough to show that it is false. The weakness of the defence is no ground for finding the accused to be guilty. 72 I. C. 538 : 44 M. L. J. 243 : 1923 Mad. 364 : 24 Cr. L. J. 426, 49 I. C. 925 : 20 Cr. L. J. 253, 20 C. W. N. 550 : 40 I. C. 698 : 18 Cr. L. J. 698 42 C. 784.

—although by setting up an inconsistent defence the defence case becomes considerably weaker, there is nothing illegal in setting up an alternative and inconsistent defence and when the accused's alternative defence before the court is not proved. 27 C. W. N. 820 : 38 C. L.

—if the case for the prosecution is false on the whole the accused is entitled to be acquitted whether his defence is true or false. 25 C. W. N. 838 : 23 Cr. L. J. 220 : 65 I. C. 1004.

—prosecution is not entitled to succeed merely by proving the falsity of defence story. 91 I. C. 514 : 27 Cr. L. J. 112 : 1926 Lah. 272.

RULINGS WHEN CONFLICTING.

17 B. 555.

—a Lower Court is bound to follow the concurrent decisions of the court to which it is immediately subordinate and is not at liberty to adopt a contrary opinion expressed by another High Court. 10 C. 82.

—a Magistrate should not follow a ruling of a H. C. to which he is subordinate when he has a ruling of the H. C. of his own. 15. cannot comment on 1. W. N. 1.

SPY.**Engineering an offence.**

—to send a person to spy out whether a crime is being committed and to come back with information that it is being committed is one thing, but to engineer an offence in order to find out whether a person when tempted will commit the offence is quite a different thing. The practice is to be strongly deprecated. 33 I. C. 315 : 17 Cr. L. J. 139.

Evidence of a spy how far relevant.

—the testimony of persons who have been members of a criminal conspiracy or else have joined it for the purpose of betraying its secrets must be very carefully scrutinised and much

(1) Construction of statutes—*contd.*

—in construing a statute absurdity should be avoided. 45 C. L. J. 185 : 101 I. O. 349 : 1927 Cal. 415.

—it is the essence of a Coda to be exhaustive on matters with which it deals. 96 I. O. 910 : 1926 Lah. 670, 29 C. 707 P. C. *Fol.*

—words not to be found in the section may be supplied by necessary implication if the context so requires. 1925 All. 610 : 90 I. C. 180 : 6 All. 361 F. B.

—the Judges are not entitled to read words into an Act of Legislature unless clear reason for it is to be found within the four corners of the Act itself. 9 Pat. 314 : 1930 Pat. 395 : 1930 Pat. 521 : 125 I. C. 521 : 12 Pat. L. T. 46.

—courts cannot read into statutes provisions which are not there even if they think that anomaly cannot be otherwise avoided. 1923 Lah. 529 : 73 I. O. 444, 1928 Lah. 337, 6 M. I. A. 1 P. C., 1928 All. 62.

—it is always dangerous to paraphrase an enactment and not the less so if the enactment is perhaps not altogether happily expressed. 18 C. 23 : 17 I. A. 122 P. C.

—where the terms of an enactment are quite clear it is unnecessary to inquire into the reason for the change they have made in the previous law. 48 M. 483 : 87 I. C. 399 : 1925 Mad. 589 : 48 M. L. J. 406.

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—but where there are two possible views the court should lean in favour of the view which does not entail any hardship or lead to any unjust consequences. 1931 Pat. 285.

—it is for the Legislature to provide a remedy for cases of hardship, if any. The duty of the courts is to enforce the law as they find it and they cannot allow their interpretations of the law to be influenced by any extraneous circumstance. 1929 Lah. 593 : 10 Lah. 596 : 30 Punj. L. R. 613 : 117 I. C. 69. F. B.

—the duty of the Court is not to put a construction which seems to the court to be best in the sense that it will work out with the most justice or with the least inconvenience, but to put a construction which seems to the court to be the best in the sense that it is nearest to the language of the legislature. 34 C. W. N. 1054 : 52 C. L. J. 100 : 1930 Cal. 770 : 130 I. C. 283.

—it is not the province of court to scan the wisdom or the policy of the law. Its duty is to administer the law as it finds it and it cannot allow itself to be deflected from the straight course by its own notions of the propriety or otherwise of the law. 1931 Lah. 283 : 1931 Cr. C. 539 F. B., 1931 Lah. 87 : 131 I. O. 81 : 12 Lah. 129 F. B.

—in interpreting the statute it is not the function of the court to make the law reasonable but to expound it as it stands. 1926 Sind 38 : 91 I. C. 99 F. B.

—where the construction of a rule of law is clear a court cannot go behind the rule by any enquiry into the reason of the rule. 45 M. 539 : 86 I. O. 201 : 1925 Mad. 449.

(1) Construction of statutes—*contd.*

—specific rules of inquiry must be followed. 53 C. 561: 98 I. C. 334 1926 Cal. 1064

—it is not for the court to legislate when an enactment is clear, whatever may be the opinion of the court as to the justice of that enactment. 1931 Lah. 320: 113 I. C. 193: I. R. 1931 Lah. 433 F. B. (S. 9 Income-tax Act.)

—a clear provision of law has to be followed and given effect to and it cannot be displaced by a mere equitable principle however wholesome it may appear. 1931 All. 277: 1931 A. L. J. 273, F. B. (S. 70 Tr. P. Act)

—the Code must be construed most favourably to the liberties of the subjects. 1 B. 308 311.

—in case of doubtful construction taxing Acts such as the Court Fees Acts should be construed strictly and in favour of the subject 1929 M. W. N. 773: 57 M. L. J. 510, but this rule does not apply when the meaning of the words of the statutes is clear. 52 M. 260 1929 Mad. 38, 113 I. C. 84: 56 M. L. J. 34.

—fiscal Acts should be construed strictly against the Govt. and on favour of the subject 52 M. 194: 116 I. C. 566: 1929 Mad. 60 F. B., 47 A. 756: 89 I. C. 122: 1925 All. 787, 9 Pat. L. T. 19: 1928 Pat. 85, 105 I. C. 881: 1927 Mad. 1002, 51 B. 89: 29 Bom. L. R. 987: 1927 Bom. 483, 114 I. C. 296: 1929 Rang. 1. F. B., 53 B. 627: 31 Bom. L. R. 581: 1929 Bom. 274: 1929 Cr. C. 41, 31 Bom. L. R. 1224, 10 Lah. 657: 30 Punj. L. R. 489: 117 I. C. 657: 1929 Lah. 609 F. B., 27 N. L. R. 175: 1931 Nsg. 156 F. B., 132 I. C. 694, 32 P. L. R. 639.

—taxing enactment should be strictly construed and the right to tax should be clearly established. Condition precedent to the imposition of any tax should be strictly complied with. 59 M. L. J. 690: 1930 M. W. N. 821: 128 I. C. 161: 32 L. W. 794.

—no tax can be imposed except by words which are clear and if the words are ambiguous, the benefit of doubt should be given to the subject. 58 M. L. J. 337: 1930 M. W. N. 29: 124 I. C. 511: 1930 Mad. 626.

—the Court Fees Act being a taxing statute must be construed in favour of the subject. 35 C. W. N. 1103.

—the Court Fees Act is a taxing statute. Not only it is to be construed strictly but as pointed out in 47 B. 507, the Act was passed not to arm a litigant with a weapon of technicality against his opponent but to secure revenue for the benefit of the State. 34 C. W. N. 1129: 1930 Cal. 787: 53 C. L. J. 91: 130 I. O. 369. 32 C. W. N. 781 P. C. Ref.

—where an intention to levy a tax is apparent on the face of the statute it is not to be cut down by extraneous considerations to extraneous consideration 34 C. W. N. 470: 58 C. 33: Cal. 903 F. B.

—the words "shall" and "may" in a statute are to be construed in their plain and ordinary meaning. 1931 M. W. N. 916.

(1) Construction of statutes—*contd.*

—in construing a statute absurdity should be avoided. 45 C. L. J. 185 : 101 I. C. 349 : 1927 Cal. 415

—it is the essence of a Code to be exhaustive of matters with which it deals. 96 I. C. 910 : 1926 Lah. 670, 29 C. 707 P. C. *Fol.*

—words not to be found in the section may be supplied by necessary implication if the context so requires. 1925 All. 610 : 90 I. C. 180 : 6 All. J61 F. B.

—the Judges are not entitled to read words into an Act of Legislature unless clear reason for it is to be found within the four corners of the Act itself. 9 Pat. 314 : 1930 Pat. 395 : 1930 Pat. 521 : 125 I. C. 521 : 12 Pat. L. T. 46.

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—fiscal statutes such as Income-tax Act must be construed in favour of the subject. 1931 A. L. J. 414, 1931 M. W. N. 916.

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—it is not the province of court to scan the wisdom or the policy of the law. Its duty is to administer the law as it finds it and to correct anomalies.

44. 51 I. C. 55 F. B.

—where the construction of a rule of law is clear a court cannot go behind the rule by any enquiry into the reason of the rule. 43 M. 559 : 86 I. C. 201 : 1925 Mad. 449.

(f) Construction of statutes—*confd.*

—specific rules of inquiry must be followed. 53 C. 561 : 98 I. C. 334 1926 Cal. 1064.

—it is not for the court to legislate when an enactment is clear, whatever may be the opinion of the court as to the justice of that enactment. 1931 Lab. 320 : 113 I. C. 193 : I. R. 1931 Lab. 433 F. B. (S 9 Income-tax Act)

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—where an intention to levy a tax is apparent on the face of the enactment it is not open to courts to cut down the general words imposing the tax by reference to extraneous consideration or possible intention of the legislature. 34 C. W. N. 470 : 58 C. 33 : 1931 Cal. 193 : 127 I. C. 775 : I. R. 1930 Cal. 903 F. B.

—fiscal statutes such as Income-tax Act must be construed in favour of the subject. 1931 A. L. J. 414, 1931 M. W. N. 916.

—words used in a fiscal Act must be given its plain meaning. 1930 All. 49 : 126 I. C. 801 : 1930 A. L. J. 1, F. B.

(1) Construction of statutes—contd.

—provision in a statute which is of a special nature and not a penal statute in itself should be interpreted with great caution. 6 Pat. L. T. 437 : 88 I. C. 522 : 1925 Pat. 535.

—statute imposing restrictions must be strictly construed. 71 I. C. 722.

—when special provisions are made by the legislature for compulsory acquisition of property belonging to a person the provisions of the law must be strictly complied with. 57 C. 837 : 34 C. W. N. 323 : 127 I. C. 666 : 1930 Cal. 471 : 1 R. 1930 Cal. 874.

—the proper course in construing a statute is to examine the language of the Act and to find out its natural meaning. 27 A. L. J. 1216 : 1929 All. 850 : 1929 Cr. C. 404.

—when the language of its enactment is clear beyond doubt the argument of convenience is not very often a sound argument. 1931 All. 162 : 1931 A. L. J. 122 F. B.

—it is an elementary rule of the construction of a statute that the provisions of an enactment must be construed according to its plain wording and nothing can be imported into it merely on the basis of any speculation as to the intention of the legislature. 1930 Cr. C. 897 : 126 I. C. 177 : 12 Lah. 36 : 31 Cr. L. J. 987 : 31 Punj. L. R. 677 : 1930 Lah. 781, 1930 Oudh 274 : 125 I. C. 841 : 5 Luck. 12 F. B.

—except where the terms used in the statute have acquired a technical sense ordinary meaning should be attached to the word or words used and the intention of a statute has to be gathered from the words used and from any speculation about its object. Regard has to be paid to three important factors, namely, (1) a statute enacts everything essential to its existence ; (2) remedial measures must be liberally construed so as to advance the remedy ; (3) where the words are ambiguous and two meanings are possible, scope and object of the enactment should be looked at for the elucidation of the meaning. 1931 All. 162 : 1931 A. L. J. 122 F. B.

—a statute should be so read as to avoid introducing what the Legislature has not thought fit to introduce and a construction having that effect should be finally rejected. 1930 All. 49 : 126 I. C. 801 : 1930 A. L. J. 1 : 1 R. 1930 All. 849 F. B.

—proviso cannot extend substantive provision of law unless there is real ambiguity in the substantive enactment. 53 C. 492 : 1926 Cal 927 : 97 I. C. 376.

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48 A. 1

—Legislature only, and not the Courts, can correct any mistake involved in their use. 13 C. L. J. 250.

—it is more reasonable to hold that the intention of the legislature was expressed in an unguarded manner than that a meaning should be given to them which could not be intended. 53 C. 492 : 97 I. C. 376 : 1926 Cal. 927. It is not reasonable to speculate intention. 1929 Lah. 641 : 1929 Cr. C. 205 : 119 I. C. 265 : 30 Cr. L. J. 1019-

(1) Construction of statutes—*contd.*

—the general rules of constructions of statutes is *expresses unius excludit alterius*, i. e., the express mention of one thing implies exclusion of another. But this maxim cannot be applied without limitation. (How this maxim is to be applied discussed). 36 Q. L. J. 382.

—where statute confers jurisdiction it impliedly grants also the power to do such acts, adopt such measures and employ such means as are essentially necessary to its execution. 26 C. W. N. 381 69 I. C. 814, 32 C. 514, 24 C. 751 *Ref.*

—a notification or rule issued under a statutory power must not be in excess of the power authorising them nor repugnant to the statute or to the general principles of the law. 1931 Lah. 476; 1931 Cr. C. 700. 132 I. C. 519; 32 P. L. R. 493.

—where a statute purports to oust the jurisdiction of the civil court it must be very strictly construed. 1928 Pat. 615; 9 Pat. L. T. 627, 9 Lah. 504; 29 Punjab L. R. 396; 168 I. C. 748; 1928 Lah. 121 F. B.

—a jurisdiction existing in a court can only be taken away by the use of precise and distinct words in a statute, or as some authorities have held, by necessary implication of the words used. 52 A. 619; 1930 All. 225; 1930 A. L. J. 402; 125 I. C. 477 F. B.

—there was at the time Act V of 1898 was passed an existing jurisdiction in the H. C. to order prosecution for the offence of perjury committed in relation to an appeal. In construing a 195 (6) the court should bear in mind that no existing jurisdiction of Supreme Court can be taken away without clear terms. 1931 A. L. J. 829

—it is no doubt the characteristic of a good judge to amplify his jurisdiction where the words of the statutes conferring the jurisdiction can reasonably be interpreted as giving him jurisdiction. Where, however, jurisdiction can only be reached by a strained interpretation of the law, the good Judge becomes a bad citizen.

which;
30 Mad. 274 *fol.*

—division of the same section into sub-sections does not affect the construction of the section. 41 C. L. J. 350; 53 C. 929; 98 I. C. 116; 1927 Cal. 149.

Long established construction should be followed.

—in construing a statute, the court will give much weight to the interpretation put upon it since its enactment. 23 C. L. J. 27, 7 C. L. J. 563; 35 C. 701. *Ref.*

—the court should be reluctant to divert from the view expressed in long established decided cases. 36 C. L. J. 36.

—where the H. C. hold a view as to the interpretation of a section in an Act and that Act is substituted by another Act reproducing the language of that section, it is a fair presumption that the correctness of the old view is accepted. 1930 All. 52 A. 363; 123 I. C. 321; 27 A. L. J. 1294.

(1) Construction of statutes—*contd.*

—where the words or expressions in a statute are plainly taken from earlier statutes in *pari materia*, which have received judicial interpretations, it must be assumed that legislature was aware of such interpretation and intended it to be followed in later enactments. The rule is specially applicable in the case of consolidatory Codes. 1931 All. 294; 1931 A. L. J. 377 F. B., 58 C. 761, 1931 All. 489; 1931 A. L. J. 711 F. B.

—where a statute uses language of doubtful import and has been interpreted in a particular manner for a number of years, the explanation given to the obscure meaning may reduce the uncertainty to a fixed rule, 34 C. 954, F. B.

—where the words in an Act have received a judicial construction the same meaning will be presumed to apply to subsequent enactment. 26 C. W. N. 703; 35 C. L. J. 36; 27 A. L. J. 983; 118 I. C. 17; 1929 All. 625 F. B., 33 C. W. N. 943; 1929 Cal. 566, 119 I. C. 8; 1929 All. 845, 1930 All. 82; 126 I. C. 357; I. R. 1930 All. 837.

—the words of the statute should not be departed from on the ground that something was omitted to be enacted. When a Code such as the I. P. C. has been in a stage of gestation for more than 20 years it should not be lightly considered to have omitted anything material. 52 M. 432; 1929 M. W. N. 84; 1929 Mad. 236; 30 Cr. L. J. 613; 116 I. C. 337; 56 M. L. J. 570.

—however strongly a court may feel that the legislature has overlooked a necessary provision or however obvious it may be that a provision has been inserted or omitted owing to the blunder of the draftsmen a court is not at liberty to make laws or amend them. 58 C. 801.

—a statute interfering with the established state of law must receive a strict construction. 9 Lab. 504; 29 Punj. L. R. 396; 108 I. C. 748; 1928 Lab. 121 F. B.

—Courts are not justified in reading into an Act words which are not there. Provisions conferring privilege must be strictly construed. 1930 Lah. 1034; 130 I. C. 419; 31 Punj. L. R. 842.

Equitable doctrine, application of,

—where there is direct statutory enactment no equitable doctrine can override it. 1930 All. 175; 124 I. C. 401; I. R. 1930 All. 497.

—where there is a direction in an Act or Regulation that cases should be directed by equity and good conscience such a direction should be interpreted to mean that the rules of English law are to be applied. 882, 57, 123 I. C.

Amending Act, prior judicial interpretation should be adhered to.

—where there have been decided cases before an Act is amended, if the amendment does not expressly show that the law as interpreted by the decisions is altered, the rule laid down by the

(1) Construction of statutes—contd.

decisions is to be adhered to. 1931 Pat. 1 : 130 I. C. 785 : 12 Pat. L. T. 127 1. R. 1931 Pat. 193, 40 A. 292 *Rel. on.*

—where a section of an Act which has received a judicial construction is re-enacted in the same words, such re-enactment must be treated as a legislative recognition of the construction. 1930 Nag. 300 : 127 I. C. 889 : 1 R. 1930 Nag. 361, 43 C. 103, 26 C. W. N. 703, 57 C. 381

—when part of the language of the section in the old Act has been copied out in the new Act it may be presumed that the legislature accepted the interpretation put upon those provisions by the courts under the old Act. 25 A. L. J. 545 : 103 I. C. 271 : 1927 All. 369 F. B.

Principle of enactment when can be discussed.

—it is not either necessary or permissible to examine and discuss the principle underlying a statute unless the words of the statute are vague and ambiguous and unless the principle is helpful in clearing up the ambiguity. 1931 All. 162 : 1931 A. L. J. 122 F. B.

Legislation is generally prospective and not retrospective.

—every legislation is prospective only, it is retrospective also when expressly so provided, or when it relates to practice or procedure. 17 C. W. N. 889, 18 C. W. N. 804 : 23 C. L. J. 506, 12 C. 853, 96 I. C. 93 : 1926 All. 667, 23 N. L. R. 30 : 101 I. C. 284 : 1927 Nag. 127, 104 I. C. 292 : 1927 All. 659, 33 C. W. N. 519 : 49 C. L. J. 362, 60 M. L. J. 191 : 130 I. C. 177 : 1931 Mad. 83 : 1 R. 1931 Mad. 353, 1931 All. 635 F. B.

—when provisions of a statute deal merely with the matters of procedure they may, unless that construction is inadmissible, have retrospective effect but provisions which touch a right in existence are not to be applied retrospectively in the absence of express enactment or necessary intendment. Provisions which would annul or alter the effect of their existing finality orders were final, are provisions
1928 M. W. W. 95 : 106
9 Bom. L. R. 60 : 9 Lah.
17 P. C. 242 : 55 C. 67 :

—alteration in the procedure are always retrospective unless there is some good reason against it. 30 Punj. L. R. 533 : 1929 Lah. 761 : 119 I. C. 733,

—a change in procedure cannot retrospectively affect a decided matter. 1931 Lah. 86.

—when a Code regulates the procedure it is unlikely that the Legislature intended without express words to abolish or extinguish substantive right of an important nature which admittedly existed at that time. 55 C. 519 : 48 C. L. J. 55 : 32 C. W. N. 482 : 26 A. L. J. 464 : 30 Bom. L. R. 744 : 1928 M. W. N. 926 : 108 I. 361 : 1929 P. C. 16.

(1) Construction of statutes—*contd.*

—statutes are presumed to be prospective and not retrospective unless clearly provided 19 N. L. R. 110 : 72 I. C. 438, 24 N. L. R. 85 : 109 I. C. 647, 57 C. W. N. 796 : 1931 Cal. 163 : 1931 Cal. 25 : 129 I. C. 355.

—retrospective effect should not be given to a statute unless an intention to that effect is expressed in plain and unambiguous language. 1930 Pat. 61 : 11 Pat. L. T. 398 : 123 J. C. 408. This principle applies to B. T. Act. 31 C. W. N. 1007 : 103 I. C. 674 : 1927 Cal. 748.

—where general words in a later Act are capable of reason-
ably extending to subjects covered by earlier legislation
they shall so extend. L. T. 90 P. C.
not take away

existing rights unless the legislature apparently intends that the true right should not co-exist. 1928 Cal. 808 : 33 C. W. N. 385 : 115 I. C. 45.

—where the new provisions are substantive which are not made to depend on the corresponding provisions of earlier statute the question of retrospective effect does not arise. 47 C. L. J. 284 : 1928 P. C. 128 : 107 I. C. 455. P. C.

—if a new enactment provides certain new rights unknown previously to the existing law and certain remedies are provided for the infringement of such rights, such remedies should be enforced only in the manner and by following the procedure indicated. 1928 M. W. N. 442 : 711 I. C. 225 : 1928 Mad. 571.

—when the law is altered by statute pending an action, the law which existed at the commencement of the suit will decide it unless a contrary intention is expressly provided. 5 N. L. J. 251, 131 I. C. 557 : 1931 A. L. J. 342.

—if the application of the provisions of an amending Act makes it impossible to exercise a vesting right of suit, the Act must be construed as not to apply to such cases. 36 C. L. J. 263 : 1 P. L. R. 285, 41 C. 1225 : 17 C. L. J. 316 *Rel.* 36 C. L. J. 132. Vesting right cannot be forfeited by a repealing enactment. 36 C. L. J. 132 : 50 C. 115 : 27 C. W. N. 183, 17 C. L. J. 316, 18 C. L. J. 27 : 20 M. C. 15 19 M. T. D. 82

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—s. 93 of the Agra Tenancy Act being susceptible of two interpretations the court should prefer the interpretation which leaves the law unchanged to one which drastically alters it. 52 A. 501 : 1930 All. 193 : 124 I. C. 540 : 1930 A. L. J. 236 : I. R. 1930 All. 540 F. B.

—when the provision in an amending Act is not a declaratory one it does not take retrospective effect. 1931 All. 217 : 1931 A. L. J. 269.

(1) Construction of statutes—*contd.*

—the usual rule that an Act is not retrospective does not apply to a Declaratory Act such as the attachment of Immovable Property Act, I of 1926, 1928 Mad 1173: 55 M. L. J. 382.

—but enactments which are declaratory in form, are not necessarily retrospective in their operation. 55 C. 67: 103 I. C. 662: 1927 Cal 763.

—the repeal of an Act, unless a different intention appears, cannot affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed or affect any remedy or any investigation or legal proceeding commenced before the coming into force of the repealing Act. An appeal is a mere continuation of the original proceeding and the right to appeal is governed by the Law prevailing at the date of institution of the suit. 26 A. L. J. 998: 1928 All 437. 111 I. C. 6. F. B., 1928 Lah. 627, F. B.

—when the law is altered during the pendency of an action the rights of the parties are decided according to the law as it existed when the action was begun unless the new Act shows a clear intention to vary such rights. 35 C. W. N. 125: 1931 Cal. 321: 52 C. L. J. 597. 131 I. C. 398.

Abolition of existing rights cannot be presumed.

—there is *prima facie* presumption that the Legislature does not intend to make any substantial alteration in the law beyond what it explicitly declares either in express terms or by clear implication, or, in other words, beyond the immediate scope and object of the Statute, and an intention to cut down or abolish existing rights must be clear and manifest and for this purpose the previous history of the Legislation may be looked to. 1930 Sind 265: 1930 Sind 289. 127 I. C. 673: 24 S. L. R. 277 F. B.

General and special law.

—where there are general words in the later Act capable

—if one statute enacts something in general terms and afterwards another statute is passed on the same subject the subsequent statute will usually be considered as repealing by implication the former statute. In certain cases again special Acts have been held impliedly to repeal a prior general Act. But in each case it depends upon the particular terms of the statute in question. There is again the rule that prior statutes are not to be held to be repealed by implication by the subsequent statute, if the two are in cases where the prior enactment is special and the subsequent enactment is general. There is the further rule that a statute may repeal a particular statute if the subject

(1) Construction of statutes—contd.

two legislations is one and the same. The test is, are the provisions of later Act inconsistent with or repugnant to provisions of the earlier Act? 54 Q. 863; 31 C. W. N. 765; 47 C. L. J. 323; 1927 Cal 432; 102 I. C. 845 F. B.

—in the case of general and special Acts the rule of construction is that the repeal of special Act by general Act by implication will not be admitted if the two Acts can be reconsidered and can stand together. 7 Pat. 747; 1930 Pat. 301; 126 I. C. 299.

—general statute is to be construed as not repealing a special one, that is, directed to a special object or a special class of objects, 94 I. C. 901; 27 Punj. L. R. 583; 1926 Lah. 88; 7 Lah. 84. (*Criminal case*).

—if the legislature makes a special Act dealing with a particular case and later makes a general Act including the subject of the special Act and is in conflict with the special Act, nevertheless, unless it is clear that in making the general Act, the legislature has had the special Act in its mind and has intended to abrogate it, the provisions of the general Act do not override the special Act. On the other hand, having made the general Act, if the legislature afterwards makes a special Act in conflict with it the special Act is to be considered to be an exception to the general Act. 60 M. L. J. 551; 130 I. C. 721; 1931 M. W. N. 73; 1931 Mad. 152.

—the general rule is that the later statute repeals the earlier statute if both are equally general. But if the later Act is a general Act and the earlier Act a special one, the earlier Act is generally not repealed by the later Act. Where there is conflict between two special Acts each of which may be described as special in a particular sense the rule is that the court should lean against repeal of the earlier Act by implication. 54 M. 92; 128 I. C. 497; 1930 M. W. N. 475; 1930 Mad. 963; 59 M. L. J. 755.

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... interpreted. 1930 Lab.

Interpretation of Criminal Case.

—in matters of interpretation of the rules of the Criminal Procedure Code any doubt felt by the court, might, as in the case of the actual trial, be resolved in favour of the accused. 1930 M. W. N. 249.

—the provisions of the Criminal Procedure Code are sufficiently rigid already. It would be a mistake to make them more rigid than they are by judicial interpretations. 1930 Bom. 241; 31 Cr. L. J. 743; 32 Bom. L. R. 596; 124 I. C. 810; 1930 Cr. C. 693; 1 R. 1930 Bom. 314.

—the Indian Extradition Act and the Code of Criminal Procedure are both criminal enactments and ought to be strictly

(1) Construction of statutes—*contd.*

certain guide in interpreting an Act or Ordinance is the Act or the Ordinance itself and when the words are perfectly plain the court need not look any further or speculate as to the intention by reference to Objects and Reasons. 1931 Cal. 633: 1931 Cr. C. 833.

Temporary enactment.

—if an Act is a temporary Act it comes to an end for all purposes at the end of the period for which it was enacted and ceases to have any further force. 29 C. W. N. 281: 86 I. C. 139: 52 C. 551: 1925 Cal. 571.

—proceedings taken under a temporary statute if not terminated before the expiry of the period of the statute, are determined *ipso facto* on the expiration of the statute. 49 B. 724: 27 Bom. L. R. 595: 87 I. C. 793: 1925 Bom. 378.

Reference to English Law.

—where the law in India is codified it is not open to the courts in India to ignore the enacted law and follow the English Law, simply because in certain cases the enforcement of the Indian Law might create hardship. 1931 All. 183: 1931 A. L. J. 64 F. B.

—rules relating to procedure under an Indian Act should not be interpreted by reference to decisions relating to another statute in England even where the language of the two statutes is the same. 51 C. 745: 1924 Cal. 864.

—where the first point to be decided arises under the law of India reference to English law is unnecessary. 28 C. W. N. 302: 34 M. L. T. 53: 51 C. 304: 26 Bom. L. R. 571: 22 A. L. J. 173 P. C.

—where there is a positive enactment of the Indian Legislature its language should be examined and its proper meaning ascertained uninfluenced by any consideration derived from the previous state of law or of the English law upon which it may be founded. 7 Pat. 221: 47 C. L. J. 171: 32 C. W. N. 402: 30 Bom. L. R. 227: 26 A. L. J. 385: 1928 M. W. N. 282: 107 I. C. 14: 1928 P. C. 2: 29 Punj. L. R. 446: 111 I. C. 8: 1928 Lah. 361 P. C., 11 Lah. 375: 31 P. L. R. 765: 1930 Lah. 364: 120 I. C. 615: 1930 Sind. 287: 127 I. C. 690, 22 C. 788 P. C., 1925 Sind 49 F. B., 22 B. L. R. 171.

—the construction of an Indian statute depends entirely upon the meaning of the word there used and its interpretation must not be influenced by any similar provision of the English Law. 1929 Lah. 344: 30 Cr. L. J. 414: 20 Lah. 283: 11 Lah. L. J. 159: 30 Punj. L. R. 197: 115 I. C. 6 F. B., 55 I. A. 18: 54 M. L. J. 281 P. C. *fol.* 1928 Lah. 308 *Diss from.*

—an English equitable doctrine affecting the provisions of an English statute relating to the right to sue upon a contract should not be applied by analogy to such a statute as the Tr. P. Act and with such result as to create without any writing an interest which the statute says can only be created by means of a registered instrument. 53 C. L. J. 359: 35 C. W. N. 550: 58 I. A. 91: 8 O. W. N. 739: 1931 M. W. N. 480: 60 M. L. J. 538: 1931 P. C. 79.

(t) Construction of statutes—*contd.*

—it is a sound rule of interpretation to take the words of the statute as they stand and to interpret them ordinarily without any reference to the previous state of law on the subject or the English Law upon which it may be founded, but where it is contended that the legislature intended by any particular amendment to make substantial changes in the pre-existing law it is impossible to arrive at a conclusion without considering what the law previously was. 32 C. W. N. 482; 55 O. 519; 48 O. L. J. 55; 108 I. C. 361; 1928 M. W. N. 926; 1928 P. C. 26; 26 A. L. J. 464; 30 Bom. L. R. 744; 9 Pat. L. T. 65; 1928 M. W. N. 926 P. C., 53 M. 449; 1930 M. W. N. 225, 124 I. C. 593, 59 M. L. J. 593; 1930 Mad. 609.

—there is a school of legal thoughts in India which holds that in construing Acts of the Indian legislature, the natural meaning of the sections should be given effect in regardless of previous decision and specially of decisions other than of Indian courts. But the Indian Evidence Act in general and sec. 27 in particular are examples which indicate the falsity of this point of view. 57 O. 2062; 1930 Cal. 291; 125 I. C. 733; 1930 Or. C. 379; 34 C. W. N. 106 I. R. 1930 Cal. 605.

—English cases are of much assistance in elucidating general principles and construing enactments when the Act of the Indian Legislature happens to be *in pari materia* with English statute.. 25 C. 210

—where the provisions of an Indian enactment follow the provisions of an English enactment or a well settled rule of English law or where the meaning of certain expressions and their legal import are not clear, reference to English authorities becomes useful and often necessary. 53 M. 449; 1930 M. W. N. 225; 124 I. C. 593; 59 M. L. J. 956; 1930 Mad. 609, 32 C. W. N. 1185; 61 M. L. J. 367; 1931 P. C. 234; 1931 A. L. J. 809 P. C., 32 P. L. R. 667.

Reference to previous statutes or case laws.

—the Legislature must be presumed to know the course of judicial decisions. 52 A. 619; 1930 All. 225; 125 I. C. 477; 1930 A. L. J. 402; I. R. 1930 All. 635.

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—reference to previous state of law is permissible for showing doubts in construing. 52 C. 1; 82 I. C. 273; 1925 Cal. 34.

—when part of the language of the section in the old Act has been copied out in the new Act it may be presumed that the legislature accepted the interpretation put upon those provisions by the courts under the old Act. 25 A. L. J. 545; 103 I. C. 271; 1927 All. 369 F. B.

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—where there is a positive enactment of the Indian Legislature its language should be examined and its proper meaning ascertained uninfluenced by any consideration derived from the previous state of law or of the English language which it is intended.

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—the construction of an Indian statute depends entirely upon the meaning of the word there used and its interpretation must not be influenced by any similar provision of the English Law. 1929 Lah. 344 : 30 Cr. L. J. 414 : 10 Lah. 283 : 11 Lah. L. J. 159 : 30 Punj. L. R. 197 : 115 I. C. 6 F. B. 55 I. A. 18 : 54 M. L. J. 281 P. C. *fol.* 1928 Lab. 308 *Diss from.*

—an English equitable doctrine affecting the provisions of an English statute which entitles a person to sue upon a contract should be applied to a statute as the Tr. P. Act and without any writing an interest created by means of a registered instrument. W. N. 550 : 58 I. A. 91 : 8 O. W. N. 480 : 60 M. L. J. 533 : 1931 P. C. 79.

(1) Construction of statutes—*contd.*

—it is a sound rule of interpretation to take the words of the statute as they stand and to interpret them ordinarily without any reference to the previous state of law on the subject or the English Law upon which it may be founded, but where it is contended that the legislature intended by any particular amendment to make it impossible to arrive at the law previously . . . J. 55: 108 I. C. 361: A. L. J. 464: 30 Bom: L. R. 744: 9 Pat. L. T. 65: 1928 M. W. N. 926 P. C., 53 M. 449: 1930 M. W. N. 225 124 I. C. 593, 59 M. L. J. 593: 1930 Mad 609.

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—reference to previous state of law is permissible for showing doubts in construing. 52 C. 1: 82 I. C. 273: 1925 Cal 34.

—reference to the old Act has been presumed that the legislature intended to amend upon those provisions by the new Act. 545: 103 I. C. 271: 1927 All. 369 F. B.

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—in construing the Negotiable Instrument Act it would be going too far to see what the previous law was. 55 C. 551; 1 Cal. 148; 105 I. C. 549.

-(1) Construction of statutes—*contd.*

—a codifying statute does not exclude reference to earlier case-laws on the subjects covered by the statute for throwing light on the true interpretation of the words of the statute but matters outside the statute cannot be invoked by such reference. 49 M. 728; 1926 Mad. 906; 1926 M. W. N. 606; 96 I. C. 978 F. B. (*criminal case*).

—the language of the statute should be examined and the proper meaning should be ascertained, uninfluenced by any consideration derived from the previous state of the law. 29 Panj. L. R. 446; 111 I. C. 8; 1928 Lah. 361 F. B., 1928 P. C. 2; 32 C. W. N. 402 P. C. fol. 52 B. 88; 30 Bom. L. R. 1; 1928 Bom. 35 F. B.

—it is a sound rule of interpretation to take the words of the statute as they stand and to interpret them ordinarily without any reference to the previous state of the law on the subject or the English law upon which it may be founded; but when it is contended that the legislature intended by any particular amendment to make it is impossible to arrive at a conclusion as to the law previously was. 32 C. W. N. C. 361; 55 C. 519; 30 Bom. L. R. J. 464; 1928 P. C. 16, see also 7 Pat. 221; 47 C. L. J. 171; 32 C. W. N. 402; 26 A. L. J. 385; 1928 M. W. N. 282; 107 I. C. 14; 1928 P. C. 2 P. C.

Mandatory or imperative and directory.

—the principle to be applied in considering whether the provisions of a Statute or an Act are imperative or directory is this: the court must look to the subject matter, consider the importance of the provision that has been disregarded and the relation of that provision to the general object intended to be secured by the Act; and upon a review of the case in that aspect decide whether the matter is what is called imperative or only directory. 38 C. L. J. 77 F. B.

—the intention of the legislature should be considered as mandatory when the aim and object of the statute would be clearly defeated if the direction to do a thing in a particular manner is not strictly observed. 1930 Oudh 434; 128 I. C. 732; 7 O. W. N. 843.

—a formality which is directed by legislature is imperative but if it is prescribed by ordinary individuals and corporations it is directory merely. 1930 Nag. 157; 127 I. C. 337; I. R. 1930 Nag. 337.

—there is no universal rule that disobedience of a mandatory provision in a statute has the consequence of nullification of all proceedings irrespective of any question of prejudice. Whether a mandatory provision is imperative or only directory depends upon a consideration of various circumstances. 41 C. L. J. 131; 90 I. C. 308; 1925 Cal. 1246; 122 I. C. 561; 1931 Lah. 15.

—the words "may make rules" denote that the provisions are not mandatory but enabling and permissive. 1930 Rang. 297; 8 Rang. 335; 127 I. C. 721 F. B.

(1) Construction of statutes—*contd.**Conflict between Law and practice.*

—where a rule of practice or procedure or whatever it may be called conflicts with the law as laid down by the legislature the Judge is bound to follow the law. 1929 Cal. 822; 1929 Cr. C. 669, 41 C. 446 *Ref*

How to reconcile inconsistent provisions.

—when there is conflict between regulation and regulation or between regulation and legislative enactment, the rule is that the latter is to prevail 10 Pat. 63; 1930 Pat. 442; 128 I. C. 133; I R. 1931 Pat. 21.

—where two co-ordinate sections are apparently inconsistent, an effort must be made to reconcile them. If impossible the latter will prevail. Particular provision must always be strictly construed as against the general provisions. 25 C. W. N. 9, 10 Pat. 63; 1930 Pat. 442.

—it must be shown by clearest language that jurisdiction

so as to impute absurdity
W. 885

—an enactment should be construed as far as possible in accordance with the terms of the other statute which it does not expressly modify or repeal. 1928 Lah. 609; 10 Lah. L. J. 413; 111 I. C. 175

—an anomalous construction can be given effect to only when the words used are clear and unambiguous and admit of no other construction 1928 Lah. 325; 9 Lah. 649; 110 I. C. 164.

—the general rule is that where two Acts are inconsistent or repugnant, the latest must prevail provided the court is satisfied that the repeal of the prior Act follows from necessary implication, 54 C. 863; 31 C. W. N. 765; 45 C. L. J. 323; 1927 Cal. 432; 102 I. C. 845 F. B.

—where there are two possible constructions it is the duty of the Court to use the common sense construction. 1929 A. 750; 30 Cr. L. J. 1085; 27 A. L. J. 1044; 119 I. C. 570; 1929 Cr. C. 355.

—where the language of an enactment is somewhat ambiguous and two constructions are possible, the construction most beneficial to the subject should be preferred, 12 Lah. 26; 1930 Lah. 781; 1930 Cr. C. 897; 31 Cr. L. J. 987; 31 Punj L. R. 677.

Ordinary sense of the word should be adhered to.

—the rule of interpretations of all statutes is that the gram-

(1) Construction of statutes—*contd.*

—in construing statutes it is a general rule that words must be taken in their legal sense unless a contrary intention appears. Unless from the context an inference can properly be drawn that a word is used in its popular and not in its technical meaning, the technical legal meaning must prevail. 115 I. C. 740 : 1929 P. C. 181 : 30 L. W. 147 P. C.

—when the language is plain in itself it is not open to add to it or to deduct from it or even to consider whether the rule is likely to create hardships in particular cases if it be read in its ordinary sense. The intention of the law must be gathered from the consideration of the words themselves. 50 A. 569 : 1928 All. 241 : 26 A. L. J. 298.

—the same words should be *prima facie* construed in the same sense in different parts of the same statute. 111 I. C. 175 : 1928 Lah. 609 : 10 Lah. L. J. 413 : 9 Lah. 701 : 30 Pnnj. L. R. 60 F. B., 1930 All. 669 : 125 I. C. 507 : 1930 A. L. J. 613.

—when a word or phrase is defined as having a particular meaning in an enactment, the same meaning must be given in interpreting the sections of the Act unless there is anything repugnant to the context. 9 Lah. 649 : 1928 Lah. 325 : 110 I. C. 164.

—when the words are clear and unambiguous the court cannot speculate as to what the intention of the legislature would be. 30 Bom. L. R. 177 : 1928 Bom. 69 : 108 I. C. 495.

—it is always unsatisfactory and generally unsafe to seek the meaning of words used in an Act of Parliament in the definition clauses of other statutes dealing with matter more or less cognate, even when enacted by the same legislature. *A fortiori* must it be so when resort is had for this purpose to the enactment of other legislation. 1929 P. C. 181 : 115 I. C. 740 : 30 L. W. 147 P. C.

—words should be given their widest possible meaning consistent with the context unless they are intended to be used in the artificial and technical sense which they have acquired in English law. 56 C. 367 : 1929 Cal. 497 : 119 I. C. 23, 1923 Cr. C. 161 : 1929 Lah. 607.

—when the words are precise and unambiguous they should be expounded in their natural and ordinary sense and the words themselves in such case disclose the intention of the legislature. It is not permissible to read into the context words which are not to be found there. 1929 All. 65 : 118 I. C. 17 : 27 A. L. J. 983, F. B.

—the first canon of construction of a statute is that the language of the enactment should be taken as it stands and effect be given to it if it is clear. 34 C. W. N. 936 : 52 C. L. J. 171 : 126 I. C. 780 : 31 Cr. L. J. 1117 : 1930 Cr. C. 908 : 1930 Cal. 577, 32 P. L. R. 341 : 131 I. C. 234.

—every word used must be given its plain meaning especially in a fiscal Act. 1930 All. 49 : 126 I. C. 801 : 1930 A. L. J. 1, F. B.

—where words are capable of two meanings the rule is to accept that which would give some effect to the words than that which would give none. 1930 Sind 265 : 127 I. C. 673 : 21 S. L. R. 277 : 1, R. 1930 Sind 289 F. B.

(1) Construction of statutes—*contd.*

—when the legislature repeats in a later enactment an earlier enactment that has obtained a settled meaning by judicial construction the ordinary presumption is that it intends the words to mean what they were taken to mean before. 1930 Lah. 764 : 31 P. L. R. 855 : 12 Lab L. J. 325 : 126 I. C. 161 : 11 Lab. 481 F. B., 30 M. 426 P. C. fol.

—the presumption that the legislature did not intend to alter the law by an Act described as a consolidatory Act cannot override the plain meaning of the words used. 35 C. W. N. 122.

—if the words of an Act are clear they must be followed, even if they lead to manifest absurdity. When once the meaning is plain it is not the province of the Court to scan its wisdom or its policy. Its duty is not to make the law reasonable, but to expound it as it stands, according to the real sense of the words. 1931 Lah. 87 : 131 I. C. 81 : 12 Lah. 129.

—in construing a statute, it is not permissible to import into its text any words of limitation unless the text requires those words by necessary implication. 1931 All. 294 : 1931 A. L. J. 377 F. B.

—a section in an Act is *prima facie* to be interpreted according to the plain meaning of the words. If the language of the section were to make it say something paradoxical or plainly inconvenient or disastrous to common sense the statute may be interpreted so as to render the provisions reasonable. 35 C. W. N. 705.

—the presumption that the Legislature did not intend to alter the law by an Act described as a consolidating Act cannot override the plain meaning of the words used. 52 C. 801.

How to construe definitions.

—where a statute gives a definition for an instrument that definition may not be controlled by the understanding of the common people with regard to it. 48 M. 454 : 1925 M. W. N. 467 : 88 I. C. 401 : 1925 Mad. 723.

—to use the definition of a word in one Act and to apply it as the definition of that word in another Act, especially when the second Act is in force in another country and under another conditions, appears to be a very dangerous course. 1931 Mad. 659 : 34 L. W. 185.

General and special words and provisions.

—where general words follow special words, sense is not limited to things *ejusdem generis* with those specified, unless reason compels otherwise. 1925 Cal. 116.

—when general intention is expressed by the legislature and also a particular intention incompatible with the general one, the particular intention is considered to be an exception to the general one and this rule applies whether those provisions are contained in the same statute or different statutes. 10 Lah. 413 : 111 I. C. 175 : 1928 Lah. 609, F. B.

(1) Construction of statutes—*contd.**Meaning of certain words.*

—words are presumed to be used in their popular meaning unless otherwise expressly provided. 16 S. L. R. 112 : 71 I. C. 161 F. B., 47 B. 843.

—in a Code which deals with both the words "suits" and "appeals" it cannot be said that the word "suit" has been used in the same sense as "appeal," 139 I. C. 871 : I. R. 1931 Ali. 439.

—in construing statutes it is sometimes necessary to read the conjunctions 'or' and 'and' one for the other. 87 I. C. 213 : 1925 Cal. 1067.

—there is no authority for the proposition that the word "may" can, in any connection, be read as meaning "shall" though the word "shall" may, under certain circumstances, be substituted for the word "may" 21 C. 832, 3 C. 47 P. C.

—the word "may" does not have the force of "shall" except where statute directs the doing of a thing for the sake of justice or the public good. 1930 Rang. 297 : 127 I. C. 721 : 8 Rang. 333 : I. A. 1930 Rang. 401. F. B.

—*prima facie* the word "may" is an enabling word, but there is no doubt that under certain circumstance enabling words may have a compulsory force, 1931 Pat 1 : 130 I. C. 785 : 12 Pat. L. T. 127 : I. R. 1931 Pat. 193.

—there is great deal of difference between "disposal" and decision of a case and a 'case' is something less definite than a 'suit.' 20 C. W. N. 1080 : 13 C. W. N. 403, 15 C. W. N. 666.

—"discretion" means when it is said that something is to be done within the discretion of the authorities that something is to be done according to the rules of reason and justice not according to private opinion, according to law and not honour. 48 B. 87 : 26 Bom L. R. I : 1924 Bom I.

Administrative despatches cannot be looked into.

—in construing the terms of an enactment Administrative despatches cannot be looked into. 51 B. 516 : 29 Bom. L. R. 498 : 104 I. C. 8 : 1927 Bom. 278 F. B.

Report of the Select Committee, reference to.

—in interpreting the statutory provision reference to the Report of the Select Committee and proceedings of Legislature is not permissible 47 C. L. J. 66 : 103 I. C. 853 : 1927 Cal. 821, 27 C. W. N. 115 : 36 C. L. J. 220. 1928 Lah. 337, 119 I. C. 265 : 30 Cr. L. J. 1019 : 1929 Cr. C. 205 : 1929 Lah. 641, nor reference to the debates in the Council is permissible. 1928 Lah 337.

—Bill cannot be referred to. 55 C. 67 : 103 I. C. 662 : 1927 Cal. 763.

—in interpreting the section of the book Reports of the Indian Law Commission may be referred to. 8 B. 241, 18 B. 616, 625, 7 A. 44, 17 C. 852 19 W. R. 48, 53.

Proceeding of Legislature, reference to.

—in interpreting a statute reference should not be made to the proceedings of the legislature which result in the provisions

(1) Construction of statutes—*contd.*

of an Act. 27 C. W. N. 115; 26 C. L. J. 220, 22 C. 788 P. C.,
21 C. 732 *Ref.*, 72 I. C. 433, 104 I. C. 661; 28 Punj. L. R. 595, 35
C. W. N. 19

—In construing a statute the court cannot look into the proceedings of the legislature to see what took place during passage of the Bill or what was the reason for the insertion of a particular clause. 53 C. 929. 44 C. L. J 350: 1927 Cal. 149: 98 I. C. 116 (Cr.), 22 C. 188 P. C. *Rel. on.*

—Proceedings of the Legislative Council and the Reports of the Select Committees of the Legislative Council cannot be referred to 22 B 125, 128, 22 Bom. L. R. 503 P. C. *contra*, 22 M. 49, 504.

—Proceedings of the Legislative Council should not be referred to determine the true interpretation of the language of a section which should be interpreted as it stands 50 A, 348; 108 I C. 573; 192d All 124; 25 A. L. J. 1061.

Statements of objects and reasons reference to.

—where the meaning of words are clear the court cannot

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1. *Chlorophyll a* and *Chlorophyll b* were determined by the method of Lichtenthaler and Whistler (1973).

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1. *Chlorophyll a* (Chl *a*)

L. J. 283 : 32 Bom. L. R. 1506.

Preamble, reference to.

1. The first is the fact that the system is not a simple one. It is a complex system with many interacting components. The system is not a simple one. It is a complex system with many interacting components.

—Preamble does not control the law when it is express. 35
C 67: 103 I. C. 662, 1927 Cal. 763, 122 I. C. 226: 1930 Lsh. 306:
31 Penn. L. R. 125

—enactment overrides preamble. 9 Lab. 360 : 1928 Lab. 35.

—in case of ambiguity or where it is necessary to interpret the Act the preamble of an Act may be referred to but definite and unambiguous words cannot be strained by such reference simply because their natural interpretation would seem to extend the scope of the Act. 92 I. C. 1053; 50 M. L. J. 301; 1926 Mad. 381, 1931 Mad. W. N. 461.

Punctuation.

—punctuation is to be taken into consideration. 17 Bo
R. 56. 12 M. L. T. 224, 49 M. L. J. 42. *contra* below.

(1) Construction of statutes—*contd.*

—but commas are on part of the statute. 27 A. L. J. 170 : 31 Bom. L. R. 702 : 8 Pat. 516 : 10 Pat. L. T. 155 : 49 P. L. J. 415 : 33 C. W. N. 323 : 1929 P. C. 69 : 56 M. L. J. 517 : 114 I. C. 604 P. C., and the court of law is bound to interpret the section without the commas inserted in the print. 1931 All. 154 : 129 I. C. 145 : 1931 A. L. J. 153, *above P. C. case followed.*

Schedules annexed to an Act.

—schedules annexed to an Act and the heading under which they are placed are parts of the enactment but if the language of the enactment is clear they are not to be taken into consideration. 30 C. W. N. 334 : 93 I. C. 909 : 1926 Cal. 638.

Heading of the Chapter.

—in construing a section the heading of the Chapter is not to be taken into consideration if the language of the section is clear, 48 M. 395 : 86 I. C. 449 : 43 M. L. J. 290, 47 A. 756 : 89 I. C. 122 : 1925 All. 767.

Illustration.

—illustration does not control the section. 1 All. 34, 36, 15 B. 491, 24 C. W. N. 982, 32 C. L. J. 24 The power of the court under s. 22 of the specific Relief Act should not be cut down by looking into the illustrations attached to the section. 1930 M. W. N. 638. *contra*, it forms the part of the statute. 21 Bom. L. R. 558 P. C.

—the court should accept, if that can be done, illustrations given under the section as being of value in the construction of the text. To warrant the rejection of illustrations on the ground of repugnancy with the section requires a special case, 55 C. 154 : 109 I. C. 752 : 1928 Cal. 204.

Marginal notes.

—Marginal notes are not parts of the section but there is no reason why they should not be consistent with the sections themselves. 41 C. L. J. 45 : 29 C. W. N. 151 : 52 C. 463 : 85 I. C. 135 : 1925 Cal. 329.

—when the language is not clear the court may look to the marginal note to see what the draft of the section is. 45 M. L. J. 731, 26 A. 393, 406, 23 C. 55, 59, 11 Bom. L. R. 576 P. C., 2 Bom. L. R. 218, 1 P. L. T. 11, 47 A. 637 : 88 I. C. 768 : 23 A. L. J. 561 F. B.

—marginal notes cannot be referred to. 26 All. 393, 406, 51 M. L. J. 704, 26 A. 393, P. C., 50 M. 733 : 1927 Mad. 156, 26 Bom. L. R. 418 : 103 I. C. 225 : 1927 Bom. 424, 11 Bom. L. R. 576 P. C., 2 Bom. L. R. 918, 1 P. L. T. 11, 23 C. 55, 59, they can sometimes be looked at if there be any doubt about the meaning of the words used, 47 A. 637 : 88 I. C. 766 F. B. Another Full Bench of the Allahabad H. C. has recently held that the marginal notes can be referred for the exposition of the meaning of a section, if the marginal notes have been inserted by or under the authority of the Legislature. 51 A. 411 : 27 A. L. J. 290 : 113 I. C. 442 : 1929 All. 53 F. B.

(1) Construction of statutes—*contd.**Rules framed under the Act, reference to.*

—a Rule framed under the Act should not be referred to for the purpose of construing an Act. The construction of an Act must depend upon the meaning which the court attributes to the words used by the Legislature. 53 C. 615 : 30 C. W. N. 803 : 43 C. L. J. 425 : 1926 Cal. 856 : 96 I. C. 72.

—where the Act confers right in general terms rules restricting such rights are repugnant to the provisions of the Act. 1928 Mad 1182 : 1928 M. W. N. 856 : 55 M. L. J. 551, F. B.

(2) Construction of documents.

Documents should be construed liberally.

—documents in this country should be construed liberally. 20 C. W. N. 210 : 22 C. L. J. 452, 22 L. L. J. 180 : 19 C. W. N. 873 : 18 M. L. T. 31, 37 A 269 P. C. 97 I. C. 124.

Construction of a document is a point of law.

—construction of a document is a point of law and there cannot be estoppel by reason of misrepresentation on a point of law unless the point of law is not clear and free from doubt. 30 C. 883 p. 894

Document must be construed as a whole.

—it is one of the cardinal principles of construction of a document that it must be construed as a whole. True intention of the parties should be ascertained from each provision which must receive attention. 32 C. W. N. 569 : 47 C. L. J. 183 : 1928 M. W. N. 91, 30 Bom. L. R. 261 : 26 A L J 488 : 107 I. C. 1 : 1928 P. C. 35.

—When each point by itself is not conclusive the document must be construed as a whole. 33 C. W. N. 578 : 1929 P. C. 115.

Each part should expound the other.

—the best construction of a deed is to make each part expound the other, so as to make all the parts agree. 63 I. C. 625.

Document when not self-contained.

—a document which is not absolute and self-contained must be read with and interpreted in the light of an established custom, if any. 63 I. C. 48.

When the description is conflicting.

—construction in case of conflicting description. 4 Pat. L. T. 652 : 72 I. C. 643

Same word should have same meaning.

—generally same meaning should be given to the same word used throughout a document unless there be some good reason justifying the attribution of different meanings. 95 I. C. 140.

—but the rule that the same meaning should be given to an expression in every part of a document in which it appears is of general application but is applicable only to cases of

(2) Construction of statutes—*contd.*

or difficulty in construing the document. 47 C. L. J. 295 : 107 I. C. 459 : 1928 P. C. 115.

When repugnant clauses are used.

—if there are two clauses or parts of a deed repugnant to each other, the first will be received and the latter rejected unless there is some special reason to the contrary but in all cases intention of the parties must be given effect to. 62 I. C. 491 (c).

—construction of a document containing contradictory recitals. 20 C. L. J. 312, 37 C. 393. 10 C. L. J. 370 : 13 M. L. T. 305 : 18 I. C. 973, 33 C. L. J. 186, and construction of two contradictory sections of an Act. 25 C. W. N. 9

Natural meaning should be adopted.

—an instrument should be construed according to its natural meaning in the light of the circumstances in which it was executed 1922 Cal. 300 : 68 I. C. 937.

—the natural and obvious meaning of the words in a deed cannot be refused to be given to them merely because it is suggested that the words have been inserted in the deed for the purpose of ascertaining and specifying the stamp duty in which case it should be specially stated. 38 C. L. J. 21 : 75 I. C. 402.

—if apt words are not used and if reservation are not made to contend that the interpretation of the

giving effect to all the directions in it. 111 I. C. 22 : 1928 Mad. 349.

Where more than one interpretation is possible.

—where more than one interpretation of a deed is possible, it is proper and necessary to look to the statute by which the form and purposes of the instrument are prescribed and to fix upon that construction which is consistent with the statute. 33 M. L. T. 438 P. C.

—if it is possible to construe a document in two different ways the court may accept the construction which makes the document valid in law. 55 C. 448. 32 C. W. N. 248 : 105 I. C. 647 : 1928 Cal. 130.

Construction by another document.

—it is always dangerous to construe the words of one document by the construction put upon similar words in another document. All the clauses must be looked at and given effect to ignoring none as redundant or contradictory. 1 Pat. 295 : 1922 Pat. 70 : 2 Pat. L. T. 273 : 65 I. C. 977.

—it is not proper to construe one document in the view taken with regard to another document which is differently worded. 42 C. L. J. 172 : 1925 Cal. 1248, 86 I. C. 737 : 87 I. C. 758 : 1925 Mad. 1175, 112 I. C. 113 (c).

(2) Construction of documents—*contd.*

—the previous correspondence between the parties cannot be referred to for construing a document 93 I. C. 184 : 28 Bom. L. R. 25 : 1926 Bom. 209.

If contemporary document can be used to explain.

—statement contained in a contemporaneous document furnishes a legitimate aid to construction. Where there are two conflicting descriptions, that which is more certain and stable and the least likely to have been mistaken must prevail. 37 C. 393 : 10 C. L. J. 570 : 4 I. C. 713.

If subsequent document can be looked to.

—a subsequent deed between strangers should not be allowed to explain a document 37 C. 626 : 7 I. C. 875

Other document not in suit cannot be used

—the language of other documents not in suit cannot be called in aid to construe the words of a particular document which is in suit. 29 C. W. N. 353 : 85 I. C. 693 : 1925 Cal. 656, 42 C. L. J. 172 : 1925 Cal. 1248 : 87 I. C. 758.

Surrounding circumstances can be considered.

—to determine the true construction of a deed of settlement regard must be had to the object and whole scope having reference to the surrounding circumstances. 32 C. L. J. 453, 28 Bom. L. R. 25 : 1926 Bom. 209 : 93 I. C. 184.

—evidence of surrounding circumstances are relevant. 40 C. L. J. 481 : 27 Bom. L. R. 4 : 47 M. 729 : 82 I. C. 993 P. C., 29 C. W. N. 57 : 26 Bom. L. R. 786 : 80 I. C. 807 : 48 M. 230 : 1924 M. W. N. 609, P. C.

—in considering whether a particular interpretation is beneficial or not to a party, circumstances not appearing on the face of the deed may be taken into account 1924 P. C. 233 : 20 L. W. 884 P. C.

Construction of a settlement deed.

—in construing a settlement deed the true rule is to find out the intention of the settlor from the expressions used in the deed itself and then to ascertain whether such intention is valid in law or not 55 C. 448, 32 C. W. N. 248 ; 105 I. C. 647 : 1928 Cal. 130.

—in construing a deed of settlement in India unless there is a special reason afforded by the deed itself to the contrary, the technical meaning given to the words in English law must be disregarded. 52 B. 176 : 30 Bom. L. R. 282 : 47 C. L. J. 198 : 32 C. W. N. 925 : 26 A. L. J. 560 : 1928 P. C. 33.

When intention of the parties can be looked to.

—where a document is not itself ambiguous the intention of the parties should not be taken into consideration and the mere delivery of a document of title does not constitute a transfer of the right to property. 42 C. L. J. 79 : 82 I. C. 411.

(2) Construction of documents—*contd.*

—in all cases the object is to see what is the intention of the parties expressed by the words used. But from the imperfection of language it is not possible to know what is the intention without inquiring further and seeing what the circumstances were with reference to which the words were used. 47 C. L. J. 300: 30 Bom. L. R. 760: 107 I. C. 346: 1927 P. C. 272.

—meaning of the words used should be looked to and not the intention of the parties to the deed. 7 C. L. J. 292.

—question is not so much of parties' intention as of meaning of words used. 49 B. 99: 84 I. C. 397: 1925 Bom. 12.

—but the intention of the parties should be looked to in construing a document containing repugnant words. 97 I. C. 580: 1926 Mad. 1208.

—the document must be construed as a whole and intention of the parties must be gathered from each provision which must receive attention. 1928 M. W. N. 91: 32 C. W. N. 569: 47 C. L. J. 183: 30 Bom. L. R. 261: 26 A. L. J. 488, 1928 P. C. 35.

—the intention must be gathered from the document itself and oral evidence is excluded. 45 A. 581: 21 A. L. J. 503: 1923 A. 586.

—for the right administration of justice the substance and the real meaning of the parties and not the form of expression and the literal sense of the transaction are to be constantly kept in view as the basis of decision. 34 C. L. J. 323.

—whether deed is a mortgage or not depends upon the intention of the parties to be gathered from the circumstances of the case. 64 I. C. 583.

—a document called a will is really a deed of gift if the intention is to make a transfer in praesenti. 74 I. C. 653.

When conduct of the parties can be looked to.

—conduct of the parties is evidence to construe a deed of doubtful import. 34 C. L. J. 129, 96 I. C. 188: 1926 Pat. 340: 1926 P. H. C. O. 199, or where the terms of a contract are ambiguous, 29 C. W. N. 166: 40 C. L. J. 322, 33 C. L. J. 332: 25 C. W. N. 308: 61 I. C. 818, 111 I. C. 701: 1928 All. 34.

—conduct of parties is relevant to explain a deed capable of several meanings. 29 C. W. N. 559: 1924 P. C. 88: 51 C. 374: 80 I. C. 1031: 46 M. L. J. 618 P. C.

—the conduct of the parties to a contract reduced into writing may not vary or alter it, but their conduct may help to explain or elucidate different meanings. 1924 P. C. 88.

—subsequent admission of meaning and conduct of the party cannot be relied in aid of construction: interpretation of ancient document is difficult. 12 C. L. J. 378.

—evidence of the acts and conducts of parties is inadmissible to show that document is not what it purports to be. 71 I. C. 1030 (c).

(2) Construction of documents—*contd*

—when the general words of an ancient grant is uncertain they may be fairly explained by subsequent usage 53 C. 533 : 30 C. W. N. 745 : 94 I. C. 974 : 24 A. L. J. 761 : 1926 : P. C. 41.

Construction does not depend upon name of the document.

—the true construction does not depend upon the name given to the document but it must be determined with reference to all its terms. 9 O. L. J. 104 : 1922 Oudb. 42 : 66 I. C. 110.

—but the name of the document by which the instrument is called by the maker must be borne in mind and should not lightly be brushed aside though it is not conclusive. 111 I. C. 22 : 1928 Mad. 349.

—a document named sale-deed under which in lieu of a debt due, land is sold for a period of 50 years, it is in reality a mortgage and can be redeemed even before that period. 76 I. C. 336.

—the mere fact that the document of title held by the grantees is called a *patta* and that they executed a *kabulyat* in similar terms is not conclusive of the question of whether they were made lease-holders i.e., farmers of revenue or were true proprietors paying a *jamahandi* to the overlord. 40 O. L. J. 473 : 48 B. 613 : 87 I. C. 779, 1924 M. W. N. 694 : 26 Bom. L. R. 1143 : 47 M. L. J. 574 P. C.

Substance shall be looked to and not the form.

—In determining whether an instrument is liable to duty as a transfer only or the full duty of a mortgage, the court will look at the substance of the transaction and not merely at the form of the instrument. 51 C. 185 : 28 C. W. N. 497 : 1924 Cal. 578 : 81 I. C. 471.

Nothing shall be considered redundant.

—no part of a document should so far as possible be left as redundant. 74 I. C. 63.

—common words of style used in conveyance of any sort may be and often are words of surplusage but when they are not words of surplusage they must be given the proper effect of their own meaning. The word "*Adha*" and "*Urdha*" in the settlement deed made it plain that there was every intention to convey all below the surface as well as on it or above it. 29 C. W. N. 725 : 86 I. C. 289 : 27 Bom. L. R. 753 : 20 A. L. J. 712 P. C.

—but while for the purpose of construing the operative part the whole of the instrument may be referred to, yet the recitals leading up to it are more likely to furnish the key to its construction than the subsidiary clauses of the deed. 3 Pat. L. T. 653 : 65 I. C. 882 P. C.

Gift or a will.

—where a Mahamedan lady executed a deed purporting to give away the whole of a zemindery estate, reserving usufruct of a *haveli* to herself and her heirs to pay the Revenue on and not a will. 27 C. W. N. 14 Bom. L. R. 1268 : 68 I. C. 1011.

(2) Construction of documents—contd.

—to ascertain whether a document is a will or gift the whole document and subsequent conduct is to be considered. 1925 Mad. 471; 86 I. C. 8.

—in construing a deed drawn by a layman in India whether it is will or a gift not only the words used should be considered but also the circumstances should be considered, 94 I. C. 967 (c).

—words which, when used in will or deed of gift, create hereditary interest, do not do so when used in grant or lease creating intermediate interest. 30 C. 20; 7 C. W. N. 314.

—where a document styled a will constitutes nothing more than a declaration of an intended adoption which was not carried out and the statements of the wishes of the executant thereafter, it is in the nature of a transaction *inter vivos* and if not registered it is not valid. 25 C. W. N. 511; 28 M. L. T. 190; 1920 M. W. N. 559; 58 I. C. 228 P. C.

—a document alleged to be a will and relied upon and established as a will in a Probate Court cannot be found not to be a will but a deed of gift, but the court may construe the will and hold that the executant had no power to execute it. 2 Pat. L. T. 728; 62 I. C. 611.

Construction of ancient document.

—an ancient document should not be construed in the light of present usage or modern understanding of law. 9 C. L. J. 475.

Instrument not drawn by professional men.

—instruments not drawn by professional men should be liberally construed, 12 C. W. N. 942, and not only the words actually used should be considered but also the circumstance should be taken into consideration and the matter ought to be broadly looked at. 94 I. C. 967 (c)

Construction of a surety bond.

—the terms of a surety bond should be construed favourably to the surety. 55 C. 91; 1918 Cal. 177; 109 I. C. 538.

General words or clauses apply to ejusdem generis

—the words "on any account whatsoever" in lease must be construed *ejusdem generis* with the preceding provisions. 5 I. C. 1022; 29 C. W. N. 124; 82 I. C. 315; 1925 Cal. 346.

—general words of release operates to pass only what the parties contemplated. 11 C. W. N. 776.

—where in a lease-deed the payments to be made are specifically dealt with and afterwards a general clause to the effect that whatever else is payable by law is to be paid, the general clause is taken to be referable to the subject matter specially referred to before. 79 I. C. 369 (c).

—where a deed specially relates to one kind followed by other kinds and then a general clause is inserted, the general clause refers to kinds immediately before it. 1925 Cal. 522.

(2) Construction of documents—*contd.*

—but a general description of mortgage property cannot be restricted by its enumerative description following the general description. 63 I. C. 625.

In the absence of words of reservation all interests pass.

—where there is no reservation all interests possessed by the vendor pass to vendee 30 C. 556. 7 C. W. N. 482; 30 I. C. 71 P. C.

Application of law in construing a document.

—any ruling as to the interpretation of a document can only be applied in its entirety to a document absolutely identical in language, and in a case the general circumstances of which are substantially the same. 46 A. 274. 22 A. L. J. 137; 80 I. C. 550; 1924 All. 324 F. B.

—clear and unambiguous terms of a document conferring an absolute and irrevocable right on a grantee can be abandoned or controlled only by clear evidence of custom ancient, invariable, unambiguous and having acquired the force of law. 1925 Pat. 228; 82 I. C. 204.

—in the case of construction of documents the only question is how the law is to be applied to the particular facts of the case before the court 65 I. C. 707.

—it is not allowable to read into an agreement the provisions of an Act subsequently passed 8 C. W. N. 521; 26 A. 209; 31 I. A. 116 P. C.

—terms of judicial orders should be construed according to law. 17 C. W. N. 565; 16 I. C. 374 (c).

Description of boundary

—boundaries must prevail as against the measurement. 46 M. L. J. 182; 19 L. W. 24.

—where the boundaries can be ascertained effort must be given to the description by boundaries irrespective of area. But if the boundaries are uncertain then area must be considered. 64 I. C. 737 (c) 41 C. 49 Ref.

—if the boundaries specified in the lease can be identified the ordinary rule is that the statement of area must give way to
414 : 1924 All. 495; 34 M. L. J. 315; 1924 M. W. N. 203.

is sold with definite circumstances surrounding the covered by the boundaries of interpretation is that the measurement. 78 I. C.

—when a deed contains an adequate and sufficient definition of the property intended to pass, any erroneous statement contained in it as to the dimension or quantity will not vitiate the description 1 Pat. L. R. 377.

—where description of land is given by boundary and the land within the boundary passes, 13 C. W. N. 702; 9 C. 7

(2) Construction of documents—*contd.*

585, but where boundaries cannot be ascertained with perfect certainty, area specified and intention of the parties should be looked to. 14 C. W. N. 268.

—in case of conflict between the Survey numbers and the boundaries, the boundaries should prevail. 105 I. C. 172 : 8 Pat. L. T. 829 : 1928 Pat. 89.

Miscellaneous cases.

—where a deed is executed for valuable consideration it may be construed adversely to the grantor in case of doubt as to construction. 63 I. C. 625.

—when the tenant is required to submit to *JaripJamabandi* and to new imposition by the Govt. the lessee is not one for fixed rent. 1923 Cal. 351.

—Contract—Court should lean towards a construction favouring the validity of a contract rather than its illegality. 85 I. C. 177 : 1925 Bom. 115.

“ which deft. agreed
 “ be plff's agent and
 “ 58 : 88 I. C. 107 : 27
 “ C.

—personal liability in a security bond, construction of. 26 C. W. N. 737 : 36 C. L. J. 5 : 43 M. L. J. 66 : 1922 M. W. N. 376 : 24 Bom. L. R. 971 : 31 M. L. T. 129 : 2 P. L. R. 1922 P. C.

—construction of a trust-deed. 32 C. W. N. 677 : 47 C. L. J. 429 : 6 Rang. 113 : 30 Bom. L. R. 788 : 107 I. C. 461 : 1928 P. C. 44.

SUPPLEMENTARY TRIAL.

—where there are two trials, one original and the other supplementary it is proper for the judge to warn the jury in the supplementary trial that they should not be influenced by the fact that the first batch have been convicted. The second trial must be decided on the evidence on its merits. As a general rule there ought to be uniformity in the convictions and punishments but it is impossible to apply this principle in all cases where there are two trials, one original and the other supplementary, one batch of prisoners being tried by one Judge and one jury and the other batch by a different Judge and different Jury. 72 I. C. 65 : 24 Cr. L. J. 305 (C).

WAIVER.

—criminal proceedings are bad unless they are conducted in the manner prescribed by law. The defect is not cured by any waiver or consent of the prisoner, specially when the irregularities are unfavourable to the prisoners. 2 C. 23 : 25 W. R. Cr. 57, 6 C. 83, 96, 12 W. R. Cr. 3 : 3 L. B. R. Ap Cr. 20, 15 C. P. L. R. 66, 12 C. W. N. 140 : 6 Cr. L. J. 434.

Waiver—contd.

—an objection to want of jurisdiction may be taken, for the first time before the H. C. on Revision. 16 W. R. Cr. 69, 23 W. R. Cr. 59, 26 B. 50, 13 B. 389.

—but a person may relinquish his right to be dealt with as a European British subject. 37 C. 467 : 24 C. W. N. 1114 : 11 Cr. L. J. 453 : 7 Ind. C. 359, but his rights must be distinctly known to him. 6 C. 83, 6 C. L. J. 463, 136 P. L. R. 1908, 7 Cr. L. J. 974 *Ref.* 3 C. W. N. 279 (note), 6 C. W. N. 202.

—no waiver can cure a defect for misjoinder of charges. 18 M. L. J. 380 : 3 M. L. T. 407 : 8 Cr. L. J. 152, but if the accused pleads guilty and does not apply for revision the conviction will not be set aside. 4 L. B. R. 315 : 9 Cr. L. J. 15, F. B.

—the prisoner can consent to nothing. 13 B. 391, 2 C. 23.

—except where the law expressly permits waiver, the rights of an accused person should not be held to be lost by his consent to a proceeding or the admission of evidence which the law does not authorise. 12 C. W. N. 140 : 8 Cr. L. J. 434.

—in a criminal trial, the court is bound to draw no inference of waiver against an accused person, especially in the case of omission by the court to perform a duty imposed on it, in express term, by the Legislature, in his interest. 9 Bom. L. R. 356 : 5 Cr. L. J. 332, 9 Bom. L. R. 730 *fol.*

WORKMAN'S BREACH OF CONTRACT ACT

(*Act XIII of 1859 as amended by Acts XVI of 1874 and XII of 1890.*)

Scope and application of the Act.

—the Act does not apply when the contract was made at a place where the Act is not in force. 57 L. C. 194.

—the object of the Act is stated in the preamble to punish fraudulent breaches of contract as well as to enable a contractor to obtain a more speedy remedy than by recourse to the Civil Courts, which would ordinarily have jurisdiction so as to afford him relief. 21 C. 262.

—the Act provides an additional, not a substitutional remedy for fraudulent breaches of contract. 15 L. C. 996 : 13 Cr. L. J. 580. 5 Bur. L. T. 133 : 9 L. B. R. 89 F. B.

—the preamble to the Act sets out that it is intended to prevent the *fraudulent breaches of contract*. But although the "fraudulent" does not appear in the body of the Act the words "shall wilfully and without lawful or reasonable excuse, neglect or refuse

Scope and application of the Act—contd.

"fraudulent" in the preamble does not control ss.1 and 2. 40 A. 670 : 47 I C. 441 : 16 A. L. J. 715. 11 A. 262 : 1889 A. W. N. 85.

—a preamble may be an useful guide when a question of doubt arises upon the construction of a particular provision and considerations relating to the scope of the Act are involved. 20 C. W. N. 1158

—the Act should be strictly construed. 14 Bom. L. R. 956,
17 I. C. 789.

S. 1. (Complaint to M. if workman neglects to perform work for which he has received advance.)

Artificer, workman or labourer, meaning of.

—these words were properly used in the order in which they appear in order to indicate a descending scale from skilled to unskilled labour. A perusal of the preamble of the Act which was passed mainly in the interest of manufacturers, tradesmen and others goes to strengthen this impression. 41 M. 182; 23 M. L. J. 607; 22 M. L. T. 435; 43 I. C. 787.

—the word "workman" must be understood as connoting manual labour of some kind, whether skilled or unskilled, above case and 28 F. R. 1904 Cr. 1 Cr. L. J. 1103.

Who are not artificers, workmen or labourers.

—an actor in a theatrical company does not come under the sec, 1904 P. R. 28 Cr., so also a musician in a band, 38 M. 551, 64 I. C. 370 : 23 Cr. L. J. 2, a village lamhardat owning a cart which he works through his son or servant and not personally, 1908 P. R. 289 Cr., a cooly sirdar or recruiter, 6 C. L. J. 180 : 6 Cr. L. J. 191, 411. C. 182, worker in a butcher's shop for sale and accounts, 7 S. L. R. 100 : 23 I. C. 751, a contracting bricklayer, 7 M. 103 : an elephant driver, 8 C. L. R. 254, a domestic servant, 2 B. L. R. 32 : 12 W. R. Cr. 26, contractor or subcontractor who does not work personally, 13 M. 351, 9 Bur. L. T. 108 : 35 I. C. 830, 42 I. C. 600, a cartman, 1917 P. R. 33, a butcher contracting to supply skins, 7 M. H. C. 13, a person undertaking to supply balast for advances received, 32 I. C. 678 : 1916 P. R. 2, a contractor to cart logs of wood from a forest to a forest depot, 43 B. 607 : 50 I. C. 493 : 20 Cr. L. J. 315, a grinder and polisher of surgical instrument entitled to get the work done by contract and to a certain percentage of profit, 36 C. 91, a washerman, 1 M. 174.

—the sec. does not apply when the contract is indefinite. 15 C. W. N. 15 or when it relates to agricultural work. 38 P. R. 1914; 27 I. C. 901; 16 Cr. L. J. 229 *contra*. 8 W. R. Cr. 6.

Who are artificers, workmen, or labourers.

Cr. 6, 8
person
L. T. 2

S. 1. When an artificer, workman, or labourer—contd.

brick-layer, 12 A. L. J. 490; 25 I. C. 351, a person who contracts to supply labourers and to have work performed by them, 3 M. H. C. Ap. 25, 1 M. 280, a compositor in a printing press, 23 M. L. J. 19.

—a person who undertakes to supervise the work of coolies and agrees to the penalties under the Act is an 'artificer, workman, or labourer' under s. 1 of the Act. 1 Mys. L. J. 25.

—an elephant driver is a 'workman' within S. 1. He is not a domestic servant as that word implies doing something inside or near a house. He has normal duties in driving the elephant which bring him within the category of a workman or labourer. 91 I. C. 896; 1926 Bom. 80; 27 Bom. L. R. 1415; 27 Cr. L. J. 160.

Any master or employer resident or carrying on business.

—the Act is not applicable to a contract made with Govt. and the Secretary of State is not one of the persons who can resort to the Act as even when carrying on business he means to acquire profit not for himself but for the State which he represents, 3 L. B. R. 33, F. B. *contra*, 4 I. C. 827; U. B. R. 1907-1909 Vol. 11 W. B. of C. p. 1.

—carry on business for the purpose of acquiring gains or profit for himself or for himself and those jointly concerned with him. 3 L. B. R. 33.

—a contract to be performed in foreign territory does not come within the Act and a breach of it cannot be proceeded with within sec. 2. 10 M. 21, 16 M. L. T. 303; 26 I. C. 653. Nor a contract entered into a foreign territory to be performed in British India comes under this Act. 7 M. 354.

—a person who is not an employer or master is a mere broker or middleman for the purpose of supplying labour to an employer or master and is not entitled to take proceedings as an employer against a workman under the Act. 14 Bom. L. R. 956; 17 I. C. 789; 13 Cr. L. J. 853.

Advance of money.

—gold and silver money given to an artificer as raw material wherewith he was to make an idol is an advance of money. 6 M. H. C. Ap. 24.

—an advance in the form of stores is not an advance of money. 1914 P. R. 23; 25 I. C. 515; 15 Cr. L. J. 603.

—an old debt is not an advance of money. 9 B. H. C. 171, 16 B. 368.

—when grain was advanced it must be proved that the labourers accepted the grain in lieu of money. 8 M. 294.

—smallness of the advance is no ground for not enforcing the performance of the contract. 40 A. 282.

On account of any work.

(Where the act does not apply).

—the Act does not apply when the advance is literally and practically in the nature of debt or where the convictions are

S. 1. Magistrate of Police and Jurisdiction—*contd.*

—s. 2 as amended by Act XII of 1920 gives a Magistrate complete direction to order either the repayment of the advance or the performance of the work. 64 I. C. 370 : 23 Cr. L. J. 2 : 1922 U. B. R. 9.

—jurisdiction under this Act is not ousted simply because there is a stipulated penalty capable of enforcement by a civil suit. 41 A. 390 : 17 A. L. J. 386 : 20 Cr. L. J. 429 : 51 I. C. 205, 11 A. 262 *fol.* 22 I. C. 742, 27 I. C. 901 *Commtd. on.*

Procedure.

—s. 83 Cr. P. C. applies to warrants issued under this section and such warrants may be executed outside the local jurisdiction of the Magistrate issuing them. 20 M. 235, 457, 20 A. 124 : 1897 A. W. N. 220.

—an offender under the Act cannot be punished or tried summarily. 33 B. 22, 25, 4 M. 234, 14 I. C. 174 : 1912 F. R. 5. *Contra.* 43 A. 281, 11 A. 262.

—where a workman admits the advance and repays the same the M. cannot make him pay to the complainant the court-fee paid on the petition of complaint. 33 B. 22.

S. 2. (Magistrate may order repayment of advance or performance of contract)**Wilfully and without lawful or reasonable excuse.**

—the inference of the M. under the Act is limited to cases where the neglect or refusal to perform the work is wilful and without lawful and reasonable excuse and it is the duty of the court to consider whether any excuse averred is lawful and reasonable. 16 B. 368.

—the expression "without lawful or reasonable excuse" has reference to the circumstances in which the breach occurred. 11 M. 332.

—these are for all practical purposes equivalent to the expression fraudulent breach of contract mentioned in the preamble. 36 C. 917.

—where the non-performance of the contract is due to the difference between the parties as to their respective liabilities it cannot be said to be perverse or wilful neglect or refusal within the meaning of the section. 2 Bom. L. R. 801.

—where the contract is wilfully broken it must be proved that it was broken without lawful or reasonable excuse. This circumstance only gives the employer right to proceed under this sec. 21 Bom. L. R. 1090 : 52 I. C. 593 : 20 Cr. L. J. 673

—a workman who had paid up in full the penalty which his master or employer has agreed beforehand to accept as compensation for any breach of the contract had a lawful and reasonable excuse for refusing to continue to perform his work according to the terms of the contract. 41 A. 890 : 51 I. C. 205 : 11 A. L. J. 386 : 20 Cr. L. J. 429.

S. 2. Wilfully and without lawful or reasonable excuse—*contd.*

—where the work has been completed when the complaint is made, the M has no jurisdiction under the sec. 28 M. 37 F. B., 39 I. C. 328 1917 P. R. 8. 19 Cr. L. J. 488 *contra*. 5 Bur. L. T. 133: 15 I. C. 996. 13 Cr. L. J. 510 F. B.

—a person can be held to have refused wilfully and without lawful or reasonable excuse only if it is proved that he was physically fit at the time. 1923 Rang. 72: 1 B. L. J. 109.

—under s. 2 (1) the Magistrate cannot order the accused to work for more than one year. 102 I. C. 497: 28 Cr. L. J. 561: 1927 Mad 603. 38 M. L. T. 321: 52 M. L. J. 563.

According to the terms of his contract.

—a contract within the scope of the Act can only be enforced in strict conformity with the terms, and cannot be enforced after the expiration of the term. 1 Weir 704, 706, 1910 M. W. N. 854: 8 I. C. 163 9 M. L. L. 81, 12 C. W. N. 869 8 O. L. J. 312: 35 C. 1028, 11 C. W. N. 247 5 Cr. L. J. 66, *contra*. 12 A. L. J. 490: 25 I. C. 351: 15 Cr. L. J. 599

—but when the time is not the essence of the contract it may be enforced. 1 Weir 705, 1 Mys. L. J. 25

—an agreement that the accused should work every day should not be transferred by the court into an agreement to work for 365 days at odd intervals if the complainant so chose when the accused should fail to work one day after the other. 1923 A. 609.

The Magistrate may in his discretion.

—now it is discretionary with the Magistrate to order refund or performance. 4 L. B. R. (1921) 7, 64 I. C. 370.

Repay the money advanced.

—a Magistrate cannot order the delivery of jewel contracted to be made. 3 M. L. T. 392.

—the Limitation Act does not bar a refund under this sec. 11 M. 332, 28 M. 37 F. B., 10 A. 350 although a civil suit may be dismissed as time-barred. 16 M. 347; *contra*. 35 C. 1028: 12 C. W. N. 896: 8 C. L. J. 312

—in a proceeding under this sec. an order for the refund of stamp duty and process fees ought to be passed. 1 Weir 698, Rat. Un. Cr. 625, 33 B. 22, 42 I. C. 600.

—an order directing the payment of compensation is illegal. 4 M. H. C. R. Ap. 67.

If such artificer, workman or labourer shall fail to comply with an order.

—the offence created by these and the succeeding words is not the refusal or neglect of a workman to perform his contract.

S. 2. If such artificer, workman or labourer shall fail to comply with an order—*confd.*

—if the complainant has completed the work before the complaint the workman cannot be punished under this sec. 28 M. 37 F. B.

—before sentencing to imprisonment there ought to be a complaint of disobedience and the statement of the accused must be taken. 5 M. 376, 4 B. H. C. G. R. 37, 14 I. C. 194; 1912 P. R. 5.

—an order directing the accused to refund or work and in case of failure, to suffer imprisonment, is illegal as to the last portion. 35 C. 1035, 6 M. H. C. Ap. 24, 18 C. W. N. 1271, 26 I. C. 145, 42 I. C. 600 (Bur.) because the language of sec. 2 shows that a Magistrate cannot order the workman to be imprisoned by the same order by which he directed him to make a payment and the order about imprisonment should be a separate one passed after the workman has failed to reply. 99 I. C. 55; 28 Cr. L. J. 23; 1927 Lab. 62.

Effect of imprisonment.

—effect of imprisonment is not a bar to civil suit for recovery of the money advanced. 2 M. H. C. 427.

—a conviction for breach is a bar to any subsequent conviction on the same contract for a further breach for not returning to service. 21 C. 262

Procedure

—an offence under s. 2 is triable by a second class Magistrate. 1924 All. 616.

—it is doubtful whether a proceeding under the first clause of sec. 2 and s. 3 is a criminal proceeding. There is no offence committed and there is no accused, hence a M. is not bound to frame his record as required by sec. 370 Cr. P. C. 27 C. 131; 4 C. W. N. 201, 4 C. W. N. 253, 4 M. 234, 7 S. L. R. 100; 23 I. C. 751; 15 Cr. L. J. 383, *contra* 2 L. B. R. 300.

—the M. cannot award compensation under s. 350 Cr. P. C. 4 C. W. N. 253, 41 A. 322, 4 M. H. C. Ap. 68.

—the M. cannot order payment of court fees. 6 Bom. L. R. 255, or payment of counsel's fee. 42 I. C. 600

—an application dismissed for default can be renewed and proceeded with after about 3 years when the workman is found by the master. 20 I. C. 228; 14 Cr. L. J. 401; 9 L. B. R. 35, 6 Bur. L. T. 108; 20 I. C. 228.

—a complaint should be brought within three months from the neglect to perform contract, else the complaint is not maintainable. 82 I. C. 366; 25 C. L. J. 1294; 1924 A. 616

—the first thing to be ascertained is whether the artificer, workmen or labourer entered into a valid contract and if so has wilfully and without lawful or reasonable excuse neglected or refused to perform work according to the terms of the contract. To ascertain this it is quite clear that the terms and circumstances of

the contract must be accurately ascertained. 12 Bom. L. R. 135:
51 C 863

—the period of imprisonment should not exceed the period which the accused is under a contract to work. 35 C. 1035.

—before process is issued a *prima facie* case must be made out. 1896 P. R. 17.

marily disposed of but the
nce fully taken, 47 I. C.
96, 1912 P. W. R. 27: 14
19 I C. 512: 14 Cr. L. J.
2 are trouble summarily.
917: 22 Cr. L. J. 165, 20 M.

—on conviction for an offence under s. 2 some period of grace should be allowed to the accused for the repayment. 82 I. C. 366: 25 Cr. L. J. 1294. 1924 All. 616.

—the M. cannot give it in the option of the debt, by passing an alternative order. 1914 P. L. R. 61 : 24 I. C. 159 : 15 Cr. L. J. 423.

1 Weir 701, 18 C. W. N.
1035, 21 C. 262, 1912 P. W.
J. 281 (Burma); 42 I. C.

—an order to repay the advance on the spot is not illegal,
1 Weir 699 but without taking the statement of the deft. is bad.
5 M. 376; 1 Weir 702.

—In case of false charge the complainant cannot be prosecuted under s. 211 I. P. C., 43 M. 443 *contra*. 2 L. B. R. 300.

—no appeals from an order passed by the M. under the first part of sec. 2, even when the order of imprisonment in de

S. 2. Appeal and revision—*contd.*

was passed simultaneously with that order. 18 O. W. N. 1271 : 26 I. C. 145 : 15 Cr. L. J. 697, 7 S. L. R. 80 : 23 I. C. 740 : 15 Cr. L. J. 372, 33 B. 25 *contra*. 4 O. W. N. 201 : 27 O. 131, 33 B. 22.

—but a revision lies. 43 B. 607 : 50 I. C. 492 : 20 Cr. L. J. 316, 35 C. 1035, *see* 27 C. 131 : 4 O. W. N. 201.

S. 2-A. (Inequitable contracts not to be enforced).

—this sec. has been newly added empowering the M. to decline jurisdiction in case the contract appears to be substantially unfair, which he could not do before as was expressed in 1 Weir 703, 43 I. C. 832. 16 A. L. J. 164, 11 I. C. 586, 40 A. 670 : 16 A. L. J. 715.

S. 2-B. (Compensation in false or frivolous or vexatious complaints).

—this sec. has been newly added by the amendment of 1920 to meet the contrary views expressed in 4 O. W. N. 258, Rat. Un. Cr. 617, 41 A. 333 : 52 I. C. 58. 20 Cr. L. J. 570.

—the Magistrate cannot pass an order against the complainant to pay compensation under s. 2-B, without first calling upon the complainant to show cause why such an order should not be passed against him. 45 A. 616 : 81 I. C. 116 : 25 Cr. L. J. 1206 : 1923 All 599.

S. 3. (Magistrate may require workman to give security for due performance of order).

—s. 3 refers only to finding bail for compliance with an order directing an artificer, workman or labourer to perform or cause to be performed the work for which he has contracted. An order, therefore, directing recognizances for the repayment of the money advanced is illegal. 1 Weir 639.

—but a proceeding under this sec. is not a criminal proceeding. 27 C. 131 : 4 O. W. N. 201.

S. 4. (To what contracts Act extends).

—the word "contract" as used in s. 4 of Act 13 of 1859 would include all contracts falling within the meaning of the Indian Contract Act of 1872 except where the period specified for performance exceeds one year. Where a new contract is entered into under circumstances showing that it merely superseded the old contract, it is enforceable under the Act. 45 A. 691 : 21 A. L. J. 622.

—the advance to the workman may be an advance made at the time of the agreement for the performance of the engagement or at some time earlier. Where a workman who had received an advance and had entered into a contract broke off his engagement and when he was charged with breach of the contract, he entered into a new contract for one year in lieu of the former advance, the new contract is one which can be enforced under this Act. It is not necessary that a fresh cash advance should have been made

15 A. 691 : 21 A. L. J. 622.

the first thing to be ascertained into a valid contract. 51

S. 4. To what contracts the Act extends—contd.

—the Act is restricted to those contracts only between employer and workman where the latter has received from the former 'an advance of money on account of any work which he shall have contracted to perform.' It cannot be said that the Act is applicable to breaches of all kinds of contract between employer and workman 15 C. W. N. 15: 8 I. C. 123.

—the words 'result from' in s. 4 are not same as 'solely and directly attributable' and if the injury can be traced to the accident even as the unnatural cause thereof, the law is satisfied. The test is whether the disablement can be traced to the injury even as an unusual but not unconnected result thereof and not whether the disablement is the direct or even probable result of the injury or the injury the natural cause thereof. 31 C. W. N. 286: 1927 Cal. 286: 100 I. C. 441

—to claim exemption under this Act the employer must prove all the circumstances mentioned in s. 11 (b) of the Workmen's Compensation Act 31 C. W. N. 286: 1927 Cal. 286: 100 I. C. 441.

S. 5. (Act may be extended by the Government).

—a notification by Local Government merely restricting the exercise by certain Magistrates of powers under the Workmen's Breach of Contract Act to certain class of cases is not *ultra vires*. 20 Cr. L. J. 731: 52 I. C. 891: 13 S. L. R. 93.

—when the Workman's Breach of Contract Act has been extended under s. 5 to an area outside a Presidency town, residence or earning on business by the employed within that area confers right to refer the complaint to the nearest Magistrate empowered in that area. 10 S. L. R. 56: 35 I. C. 484: 17 Cr. L. J. 308, 25 C. 637 *fol.*

—a master or employer residing or carrying on business in a place to which the Act is extended has the same rights as are conferred by the Act on masters or employers resident or carrying on business in any Presidency town. The extension of the Act extends all its incidents even though in terms the extension of the residence of complainant is impossible 35 C. 1028: 12 C. W. N. 869: 8 C. L. J. 312: 8 Cr. L. J. 131.

—the object of s. 5 is not merely to enable employers, resident or carrying on a business in places specified in section 1, to prosecute, at other places, persons, who have received advances, but to extend all the provisions of the Act to other places and to confer a right to refer a complaint to a Magistrate empowered in such other places. 10 S. L. R. 56: 35 I. C. 484: 17 Cr. L. J. 308, 25 C. 637 *fol.*

such other
sec. 1 of the
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S. 2. Appeal and revision—contd.

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45 A. 691 : 21 A. L. J. 622.

the first thing to be ascer-
into a valid contract. 51

S. 20—contd.

—where there was nothing to show that the accused was of bad character or was engaged in any criminal undertaking at the time he was arrested and he had produced evidence of good character, a sentence of 3 years' rigorous imprisonment was sufficient under this sec. 1931 Lah. 663; 1931 Cr. C. 927; 1. R. 1931 Lah. 695; 132 I. C. 855; 32 Cr. L. J. 995.

BENEFIT OF DOUBT.

—where the evidence in the case leaves a reasonable doubt in the mind of one considering it carefully the benefit of doubt must be given to the accused because it is much better that a guilty man should be acquitted than that an innocent man should be wrongly convicted. 54 C. L. J. 244; 1931 Cal. 752; 134 I. C. 1191; 1931 Cr. C. 1016.

CANTONMENTS ACT (11 of 1924)**S. 118.**

—a verandah of a private house accessible to a public street is not a public place within the meaning of s. 118 of this Act. 1931 Lah. 576; 1930 Cr. C. 864, (11 P. R. 1890 Cr., 1891 A. W. N. 8, 1887 A. W. N. 75) *Ref.*

S. 181.

—where cantonment authority grants permission without any reservation so far as the use of the building for shops is concerned, its subsequent resolution in modification of the previous one by adding the words "shops rejected" is *ultra vires*. 1930 Lah. 822; 1. R. 1930 Lah. 749; 126 I. C. 525.

S. 284.

—s. 107 of the Tr. P. A. is made applicable to cantonments by virtue of sec. 287 of the cantonment Act. 1931 Lah. 501; 134 I. C. 289; 32 P. L. R. 361; 1. R. 1931 Lah. 913.

CATTLE TRESPASS ACT.**S. 20**

—the expression "an agent personally acquainted" means an agent who has some personal knowledge of the circumstances relating to the seizure of the cattle and not merely an agent who holds an *em-mukhtiyarnama* or a general power-of-attorney, but personal acquaintance need not mean that a person having such acquaintance must have been an eye-witness. The word "agent" includes a servant. 1931 Nag. 98; 27 N. L. R. 167; 132 I. C. 457; 32 Cr. L. J. 896; 1931 Cr. C. 450.

S. 21

—a person who is in charge of the cattle at the time of seizure in person to be included in the class of persons who come under the category of "an agent" mentioned in s. 21 and he can lodge a *va-complaint*. N. L. R. 201.

SUPPLEMENT.

ARMS ACT.

S. 19 (a) and (d)

—where the accused who was Sikh was found to possess *kirpans* or *jambias* measuring from nine to ten inches with an intention to take them to a Native State for sale, held that the *kirpans* were not liable to confiscation; held also that the notification relating to the Arms Act imposing penalty on the subject must be construed very strictly. 1930 Bom. 153 : 31 Cr. L. J. 847 : 125 I. C. 435 : 1930 Cr. C. 477 : 32 Bom. L. R. 106.

S. 19 (e).

—spears with iron heads, having broken ends or blunted edges are not mere ornamental weapons so as to be exempted by the Govt notification under sec. 13 and the taking of such weapons for gymnastic parades would amount to an offence of "going armed" within this sec. 1930 Bom. 174 : 126 I. C. 881 : 31 Cr. L. J. 1109 : 1930 Cr. C. 550 : 32 Bom. L. R. 571.

S. 19 (f)

—the word ammunition includes only such explosive or fulminating material as could be used for any military purpose or in particular for firearms or torpedoes or war-rockets etc. and *patakkas* which are quite for such purposes are ammunitions and conviction for the possession of the same without license is maintainable. 53 A. 228 : 1931 All. 17 : 130 I. C. 626 : 1930 A. L. J. 1467 : 32 Cr. L. J. 564 : I. R. 1931 All. 290.

—the possession of a *jambia* without a license is not an offence under s. 19 (f). 1930 Bom. 159 : 1930 Cr. C. 483 : 125 I. C. 717 : 31 Cr. L. J. 932 : 32 Bom. L. R. 350.

S. 20.

—to apply sec. 20 there must be some special indication for an intention to conceal the possession of the arms from a public servant, railway officer or public carrier. When revolvers are concealed in trunks to be conveyed by railway the intention to conceal is to be presumed. 1931 Lah. 571 : 1931 Cr. C. 859 : 32 P. L. R. 651.

—this sec. is not confined to cases where the import or export of arms is attempted but can be applied to ordinary cases of concealments also such as where the accused who was travelling in a Railway compartment was found to have a revolver and certain cartridges in the pocket of his inner coat. 1931 Lah. 663 : 132 I. C. 855 : 32 Cr. L. J. 995 : 1931 Cr. C. 927.

—an essential ingredient of this sec. is that the man doing any act mentioned in cls. (a) (c) (d) or (f) or sec. 19 should do it in such a manner as to indicate an intention that such act may not be known to any public servant and consequently merely keeping of a *chhavi* blade in one's own house and possessing stick that would fit into it cannot be regarded as falling within s. 20. 1931 Lah. 561 : 1931 Cr. C. 849.

S. 20—*contd.*

—where there was nothing to show that the accused was of bad character or was engaged in any criminal undertaking at the time he was arrested and he had produced evidence of good character, a sentence of 3 years' rigorous imprisonment was sufficient under this sec. 1931 Lah. 663. 1931 Cr. C. 927: I. R. 1931 Lah. 695 132 I. C. 855 32 Cr. L. J. 995.

BENEFIT OF DOUBT.

—where the evidence in the case leaves a reasonable doubt in the mind of one considering it carefully the benefit of doubt must be given to the accused because it is much better that a guilty man should be acquitted than that an innocent man should be wrongly convicted. 54 C. L. J. 244: 1931 Cal. 752: 134 I. C. 1191 1931 Cr. C. 1016.

CANTONMENTS ACT (11 of 1924)

S. 118.

—a verandah of a private house accessible to a public street is not a public place within the meaning of s. 118 of the Act. 1931 Lah. 576: 1930 Cr. C. 864, (11 P. R. 1890 Cr., 1881 A. W. N. 8, 1887 A. W. N. 75) *Ref.*

S. 181.

—where cantonment authority grants permission without

S. 284.

—s. 107 of the Tr. P. A. is made applicable to cantonments by virtue of sec. 287 of the cantonment Act. 1931 Lah. 501: 134 I. C. 289: 32 P. L. R. 361: I. R. 1931 Lah. 913.

CATTLE TRESPASS ACT.

S. 20

—the expression "an agent personally acquainted" means an agent who has some personal knowledge of the circumstances relating to the seizure of the cattle and not merely an agent who holds an am-mukhtiyarnama or a general power-of-attorney, but personal acquaintance need not mean that a person having such acquaintance must have been an eye-witness. The word "agent" includes a servant. 1931 Nag. 98: 27 N. L. R. 167: 132 I. C. 457: 32 Cr. L. J. 896: 1931 Cr. C. 450.

S. 21

—a person who is in charge of the cattle at the time of seizure is person to be included in the class of persons who come under the category of "an agent" mentioned in s. 21 and he can lodge a valid complaint. N. L. R. 201.

S. 22

—compensation for loss caused by seizure of cattle cannot be awarded unless the complainant makes a specific claim about it. 1930 Nag. 149; 26 N. L. R. 158; 121 I. C. 665; 31 Cr. L. J. 278; 1930 Cr. C. 505.

—even in cases where the complaint is filed by the agent the court can award compensation to the person whom the agent represents. 26 N. L. R. 201.

—a sentence of imprisonment in default of payment of compensation under sec. 22 is illegal. 1930 Nag. 149. 1930 Cr. C. 505; 121 I. C. 665; 26 N. L. R. 158.

S. 24

—damage must be proved before a conviction under s. 24 can be sustained. Where cattle were driven across a Railway line at a place where there was no fence, there was no likelihood of damage and no offence was committed. 1930 Oudh. 250; 126 I. C. 497; 31 Cr. L. J. 1015; 1930 Cr. C. 570; 7 O. W. N. 461.

—a person who removes cattle from a pound where they are secured without paying the legitimate fee has the dishonest intention of saving himself the fee and is liable to be convicted under this sec and sec. 380 of the I. P. C. But conviction under both the provisions cannot be upheld. 1931 Mad. 18; 1931 Cr. C. 32; 1930 M. W. N. 529; 129 I. C. 451.

CIRCUMSTANTIAL EVIDENCE.

—in the definition of proof in the Evidence Act no distinction is drawn between circumstantial and other evidence. In every case the Court should consider the whole matter before the court and proceed with prudence before acting on probabilities. 1931 Lah. 529; 133 I. C. 446; 32 Cr. L. J. 1032; 32 P. L. R. 461; 1931 Cr. C. 769; 1 I. R. 1931 Lah. 782.

—the mere fact that the accused absconded is in itself of little importance in a case where the evidence is worthless and consists of very little, of anything, beyond the fact that the accused absconded. 1931 Lah. 38; 130 I. C. 410; 32 Cr. L. J. 522; 32 P. L. R. 259; 1931 Cr. C. 102.

—the principle to be followed in criminal cases based on circumstantial evidence are as follows: (1) the circumstances from which an inference adverse to the accused is sought to be drawn must be proved beyond all reasonable doubt and must be closely connected with the fact sought to be inferred therefrom: (2) in order to justify an inference of guilt the circumstances from which such an inference of guilt is sought to be drawn must be incompatible with the innocence of the accused and incapable of explanation upon any other reasonable hypothesis than that of guilt. 52 C. L. J. 417; 1931 Cal. 11; 129 I. C. 677; 35 O. W. N. 169; 32 Cr. L. J. 418; 1931 Cr. C. 43.

CONFESSION.

—confession is a 30 Evl. Act means confession of the offence for which the accused are being tried. It cannot reasonably be interpreted to mean confession of any offence in the world. 54 M. 75, 59 M. L. J. 47; 129 I. C. 645; 1930 M. W. N. 858; I. R. 1931 Mad. 309, 59 M. L. J. 471, 1931 Mad 177.

—the proper recording of confession which can be shown on the face of them to be voluntary and apparently true is of the highest and supreme importance in a criminal case. 1930 Oudh 449; 1930 Cr. C. 1073; 32 Cr. L. J. 97, 7 O. W. N. 909; 128 I. C. 215; 6 Luck 335.

—a 30 Evl. Act creates an exception to the fundamental principles of the criminal law and must be strictly construed in favour of the accused. 54 M. 783; 61 M. L. J. 358; I. R. 1930 Mad 815, 134 I. C. 63; 1931 M. W. N. 886; 1931 Mad 820, 32 Cr. L. J. 1099.

—confession implicating a co-accused requires corroboration if the co-accused is to be convicted on it. 1930 Pat. 385; 123 I. C. 393; I. R. 1930 Pat. 313; 31 Cr. L. J. 492; 1930 Cr. C. 767.

—a confession by the accused implicating himself and the co-accused by the court and of other accused. 1931 Mad 845;

—when a confession by the co-accused, if the accusation against the co-accused and may be taken to be substitute for the sanction of oath. 1930 All. 29; 120 I. C. 257.

—where there is no other evidence to show affirmatively that any portion of the exculpatory statement in the confession is false, the court must accept or reject the confession as a whole and cannot except only the inculpatory element as inherently incredible. 52 All. 1011; 1930 All. 1; 129 I. C. 258; 32 Cr. L. J. 362; 1930 A. L. J. 1481; 1931 Cr. C. 1; I. R. 1931 All. 130 F. B.

—the court has discretion to exclude a confession by an accused altogether from consideration against the co-accused if it is so disposed. 26 N. L. R. 229; 1930 Cr. C. 818; 125 I. C. 673; 31 Cr. L. J. 831; I. R. 1930 Nag 321; 1930 Nag 242 F. B.

—the statement of an accused person under s. 342 Cr. P. C. by which he implicates the co-accused is admissible in evidence in the trial of the co-accused by virtue of s. 30 Evl. Act but its value depends upon the circumstance of the case. 54 B. 531; 127 I. C. 105; 1930 Cr. C. 786; 32 Bom. L. R. 747; 31 Cr. L. J. 1137; I. R. 1930 Bom. 489; 1930 Bom 351.

—in cases where the sole evidence against the accused is that of a retracted confession, such confession, if it is relied on, must be relied on as a whole and not only in part. 1930 All. 192; 1930 Cr. C. 84; 121 I. C. 550; I. R. 1930 All. 166.

—the use to be made by the court of a confession whether retracted or not is a matter of procedure rather than law, the

Confession—contd.

business of the court being to make up its mind in accordance with the dictates of common sense whether it is safe to believe the confession or not. 1931 Lah. 196: 130 I. C. 641: I. R. 1931 Lah. 321: 32 Cr. L. J. 579: 1931 Cr. C. 316, (29 All. 434, 30 P. R. 1914 Cr.) *fol*

—the evidentiary value to be attached to a retracted confession would depend upon the facts and particular circumstance of the case. To argue that such evidence is corroborated by the evidence of an approver is to say that one tainted evidence gains strength from another tainted evidence. 1931 Lah. 408: 132 I. C. 185: I. R. 193 Lah. 537. 1931 Cr. C. 648: 32 Cr. L. J. 818.

COPYRIGHT ACT (111 of 1914).**S. 3**

—if a copyright is shown to have subsided when Act 111 of 1914 came into force, the period of copyright substituted by that Act would be 50 years from the death of the author. When the complaint for infringement of copyright is made after the new Act comes into force the question is whether the copyright is subsisting under the new Act and not whether it was subsisting under the old Act XX of 1847. 1931 All. 353: I. R. 1931 All. 433: 131 I. C. 865: 1931 Cr. C. 609: 32 Cr. L. J. 814: 1931 A. L. J. 304.

S. 6

—where the copyright of the plaintiff is a particular book was admitted and only its infringement by the threatened publication of an alleged similar book was denied and it further appeared that if the injunction was not issued irreparable injury or inconvenience might result to the plaintiff, held that it was a proper case in which temporary injunction should be issued; also held that the application for temporary injunction is governed by s. 6 of this Act and not by s. 56 (f) of the Specific Relief Act. 1931 Lah. 624: 132 I. C. 586: I. R. 1931 Lah. 634.

—where in a case of infringement of copyright the plaintiff asked for damages under s. 6 on the footing of the loss sustained and in the alternative under s. 7 for the delivery of the unsold infringing copies and damages on the footing of conversion in respect of the infringing copies sold, and the court awarded damages under s. 6 and also decreed delivery of the unsold copies, the plaintiff could not claim damages under s. 7 also. 34 C. W. N. 540: 51 C. L. J. 243: 1931 Cal. 233: 126 I. C. 197: I. R. 1930 Cal. 693.

S. 7

—whether there has been an infringement of copyright or not depends on whether a colourable imitation has been made. Whether a work is a colourable imitation of the plaintiff's work is a question of fact. Further, the plaintiff must show that the defendant's work is not enough. A mere coincidence is not enough. 540: 126 I. C. 197: 1931 Cal. 233.

CRIMINAL PROCEDURE CODE

S. 4 (h)

—it is of the essence of a complaint that the accusation should have been made with a view to action being taken under the Code of Criminal Procedure 1930 Pat. 550 : 32 Cr. L. J. 210 : 129 I. C. 87 : I. R. 1931 Pat. 71 : 12 Pat. L. J. 109 : 1930 Cr. C. 1094.

—the essential difference between a complaint and information is that a Magistrate acts on a complaint because the complainant asks him to act but a M. acts on information on his own initiative 1930 All. 820 1930 Cr. C. 1204 : I. R. 1931 All. 164. 129 I. C. 436 32 Cr. L. J. 306 : 1930 A. L. J. 1316.

—an application under s. 107 is not a complaint. 53 A. 148 : 130 I. C. 630 : 32 Cr. L. J. 570 : 1930 A. L. J. 1475 : 1931 All. 53 : 1931 Cr. C. 125. 32 Cr. L. J. 570

—a joint complaint is not contemplated by the Code as is supported by the provisions as to examination of complaint under s. 200 Cr. P. C. 35 C. W. N. 782 : 1931 Cal. 646 : 134 I. C. 1189 : 1931 Cr. C. 846.

S. 4 (k)

—an "enquiry" of a case does not begin with the lodging of the complaint or even with the issue of process but with the appearance on such processes before the Magistrate to answer the charges. 1931 Bom. 411 : 134 I. C. 361 : 32 Cr. L. J. 1161 : 1931 Bom. 473 33 Bom. L. R. 668 : 1931 Cr. C. 726.

S. 4 (r)

—a prosecuting Inspector can be appointed by the accused with the permission of the court to defend him and the M. should record the statement of the accused as to such appointment. 1930 Nag. 150 : 26 N. L. R. 172 : 31 Cr. L. J. 419 : 122 I. C. 442. 1930 Cr. C. 506

S. 7

—the word "district" used in s. 7 is not the same thing as a revenue district. It is used in several senses in different connections and in the section, the word connotes a district for the purposes of criminal administration. 54 M. 943 : 134 I. C. 51 : I. R. 1931 Mad. 803 : 1931 M. W. N. 161 : 1931 Cr. C. 937 : 61 M. L. J. 265 : 1931 Mad. 697 F. B.

S. 9

—there is only one court of sessions in each Sessions Division

Judges. 58 C.
Cal. 544 : 132
90.

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S. 9—*contd*

vires 55 B. 576 : 1931 Bom. 313 : 134 I. C. 347 : 32 Cr. L. J. 1147 : I. R. 1931 Bom. 459 : 1931 Cr. C. 569 : 33 Bom. L. R. 675.

S. 15

—where a complaint was made to a Bench for an offence which they had no jurisdiction to try but they tried the accused for a lesser offence it was not void. 1930 M. W. N. 770.

—where only three Magistrates of a Bench tried the case but the judgment was signed by seven, it was illegal even if it resulted in acquittal 1930 M. W. N. 770.

—a Bench of Magistrates cannot sit in revision of its own judgment and if there is any miscarriage of justice the President of the Bench may refer the matter to the District Judge who can act under s. 438 Cr. P. C. 53 M. 870 : 59 M. L. J. 708 : 1930 M. W. N. 409 : 129 I. C. 628 : 1930 Cr. C. 1055 : I. R. 1931 Mad. 292.

S. 17

—there is no provision in the Code of Criminal Procedure giving a District Magistrate power to stay proceedings in a subordinate criminal court; the High Court can pass such order only in exercise of its general powers of superintendence under s. 107 of the Govt. of India Act 1931 Pat. 411 : 1931 Cr. C. 999 : 12 Pat. L. T. 671, 76 I. C. 869 *fol.*, 76 I. C. 872 *Diss.*

—an application within the meaning of s. 17 (4) must be an application which is recognised by law, that is, a document properly stamped. 1931 All. 435 : 1931 A. L. J. 591 : 1931 Cr. C. 707.

S. 29 B

—the words "may be tried" are permissive, the word "may" is sometimes construed as "shall" but obviously its prima facie effect is merely permissive and not obligatory. Under s. 29-B a Magistrate other than one of those particularly referred to in the section before whom an offender under the age of fifteen years is brought may deal with the matter under the ordinary provisions of the code or he may direct that the accused be dealt with under s. 29B. 1931 Bom. 198 : 32 Cr. L. J. 722 : 131 I. C. 476 : 1931 Cr. C. 342 : 33 Bom. L. R. 312 : I. R. 1931 Bom. 300.

—s. 29-B authorises the Magistrate in charge of the Central Children Court to try all offences other than an offence punishable with death or transportation for life. 36 C. W. N. 164.

S. 35

—the amendment of s. 35 does not alter the law as regards s. 71 I. P. C. as laid down in 16 C. 442 F. B., 35 C. W. N. 184 : 132 I. C. 247 : 1931 Cr. C. 602 : 1931 Cal. 450 : I. R. 1931 Cal. 567.

S. 35 (3)

—where the accused was sentenced under ss. 366 and 376 I. P. C. and the sentence for each offence was less than four years but the aggregate of the two exceeded that term, held that the

S. 35 (3)—*contd.*

sentences should be treated as single sentence and appeal could be preferred to the H C. 1930 A. L. J. 1206 : 129 I. C. 731 : I. R. 1931 All. 219.

S. 40

—the grant of leave to a Magistrate belonging to the Provincial Civil Service as an Extra Assistant Commissioner does not cause the cessation of his power so as to take his case out of the category of the cases contemplated by s. 40 Cr. P. C. 1930 Lah 833 : I R 1930 Lah. 745 : 126 I. C. 521 : 31 Cr. L. J. 1051 : 1930. Cr. C 850.

S 46

—submission to custody by word or action under s. 46 (1) Cr. P. C may be taken to amount to custody within the meaning of s. 27 Evi. Act. 1931 Lah 278 : 32 P. L. R. 347 : 131 I. C. 93 : 32 Cr. L J. 630 : 1931 Cr. C 534 : I R. 1931 Lah. 365.

S. 51

—It is not permissible under the Cr. P. C. forcibly to take hold of an arrested person and examine his body medically without his consent in order to qualify a medical witness to give medical evidence, it amounts to an assault and the Police cannot commit assault upon prisoners for the purpose of procuring evidence against them. Nor the doctor can examine the body of an arrested person simply by way of a second search. 35 O. W. N. 1212 1931 Cr. C. 753 : 134 I C 1053 : 1931 Cal. 601.

—in a search by a police officer under s. 51 Cr. P. C. it is not necessary that the purpose of the search should be to look for something definite such as an incriminating article. 35 C. W. N. 1212 : 1931 Cr. C. 753 : 134 I C. 1053 : 1931 Cal. 601.

S 53

—though this sec. provides that the police officer making arrests may take into custody all articles and seize weapons found on the person, he may also take into custody other things. of attention such may depose to such 1931 Cal. 601 : 134 I. C. 1053.

S. 61

—the detention in the police custody is viewed with disfavour by the law and even in the case of an accused person such detention

S. 70

—the service was not noted where no attempt was made to find out the accused on whom the summons was to be served and it bore the endorsement "served on Durwans". 35 C. W. N. 868.

S 79

—what is essential under ss. 79 and 80 is the authority in writing. The authority may be written on the warrant itself or on a separate piece of paper. 1931 Sind. 89 : 2 S. L. R. 117 : 132 I. C. 465 : 31 Cr. L. J. 465 : I. R. 1931 Sind 81 : 1931 Cr. C. 489.

S. 88

—an attachment of property is not authorised in a district other than that of the Issuing Magistrate unless the order of attachment is endorsed by the Dt. Magistrate within whose District the property is situate. 11 Pat. L. T. 403 : 1930 Pat. 347 : I. R. 1930 Pat 317 : 123 I. C. 397 : 31 Cr. L. J. 494 : 1930 Cr. C. 719.

—the doors of houses are parts of the furniture of the house and are moveable properties but the frames imbedded in the walls or floors are to be considered immovable properties and accordingly the action of the Police Officer in digging the walls or floors to remove them does not seem to be technically correct and constitutes serious irregularities in connection with a house search. 11 Pat. L. T. 878 : 1930 Pat. 387 : 125 I. C. 734 : I. R. 1930 Pat. 560 : 31 Cr. L. J. 937 : 1930 Cr. C. 800.

—the position of the Government in relation to properties attached under s. 88 Cr. P. C. is not simply that of an attaching creditor but at least that of a receiver in possession and management and as such the Government has an interest in the property so as to be entitled to be made a party to a suit on mortgage of that property. 1930 M. W. N. 1021 : 60 M. L. J. 72 : 129 I. C. 47 : I. R. 1931 Mad. 191 : 1930 Mad. 1017.

S. 99-A.

—the mere fact that a document is only an advertisement of a forthcoming book is not sufficient to protect it from forfeiture under s. 99-A and in considering whether it is seditious or not the advertisement must be considered on its own merits and not in the light of the forthcoming book. Although the advertisement may be intimately connected with the book that may be found to be seditious there is no provision to forfeit the advertisement for such reason only. 52A. 775 : 1930 All. 401 : I. R. 1930 All. 678 : 125 I. C. 470 : 31 Cr. L. J. 840 : 1930 A. L. J. 713 : 1930 Cr. C. 625 F. B.

S. 99-D.

—where a document admits of two reasonable and possible views an applicant must be given the benefit of that which is most favourable to him. 52 All. 775 : 1930 All. 401 : 125 I. C. 470 : 1930 Cr. C. 625 : 31 Cr. L. J. 810 : I. R. 1930 All. 678 : 1930 A. L. J. 713 F. B.

S. 99-E.

—the Government Advocate should begin and state the case in support of the Local Government. But when both parties have been heard fully the question of onus is of no practical importance. 52 All. 715 : 1930 All. 401 : I R. 1930 All. 678 : 125 I. C. 470 : 31 Cr. L. J. 840 : 1930 A. L. J. 713 : 1930 Cr. C. 625 F. B.

S. 103.

—the object of s. 103 Cr. P. C. is presumably to obtain as reliable evidence as possible of the search and to exclude concoction and malpractice. A police officer making the search may be called as witness at this trial but an investigating officer cannot. It is possible that there was no person living near the place of occurrence who would fulfil the definition of respectable inhabitant. In that case, however, some evidence to that effect ought to be given. 50 C. L. J. 518 : 1930 Cal. 141 : 124 I. C. 486 : 31 Cr. L. J. 667 : I. R. 1930 Cal. 438 : 1930 Cr. C. 141

—the emphasis is on the word "respectable" and not on "locality". 10 Pat. 821.

—this section requires that the *Panchas* should actually accompany the searching officer and should be actual witnesses to the fact of the finding of the property. If the offence is by evidence proved beyond doubt the irregularity in the search does not vitiate the conviction. 51 B. 471 : 1930 Bom. 169 : I. R. 1930 Bom. 377 : 31 Cr. L. J. 927 : 125 I. C. 713 : 32 Bom. L. R. 344, (41 C. 350, 26 Cr. L. J. 1112, 27 Cr. L. J. 265) *fol.*

—the word "locality" is a comprehensive word and include villagers within three or the search is to be conducted. I. R. 1931 Oudh 201 : 131 I. C. L. J. 277.

—a constable who has been dismissed from service can hardly be called as respectable man of the locality within the sec. 1931 Lah. 408 : 32 Cr. L. J. 818 : I. R. 1931 Lah. 537 : 1931 Cr. C. 648 : 132 I. C. 185

S. 106.

—"offences involving a breach of the peace" means offences in which a breach of the peace is an ingredient and not offences

—"offence involving a breach of the peace" includes not only offences of which a breach of the peace is a necessary ingredient and in which a breach of the peace has actually occurred but also cases of offences in which an evident intention to commit a breach of the peace is expressly found. 35 C. W. N. 1150 : 1931 Cal. 645 : 1931 Cr. C. 845 : 134 I. C. 185

—unless the offence is one which necessarily involves a breach of the peace there must be an express finding by the Court

S. 106—*contd.*

the offence committed did in fact involve a breach of the peace. 34 C. W. N. 988 : 1930 Cr. C. 1068 : 1930 Cal. 646.

S. 107.

—this sec. is one appearing in a chapter devoted in the Cr. P. C. to the object of preventing a breach of the peace and to prove the existence of circumstance which may lead a reasonable man to apprehend a breach of the peace. It is not always necessary to prove an overt act towards a breach of the peace on the part of the accused. 52 A. 593 : 1930 All. 408 : 1930 Cr. C. 565 : 31 Cr. L. J. 710 : I. R. 1930 All. 562 : 124 I. C. 706 : 1930 A. L. J. 866.

—proceedings under this sec. are intended to be preventive not punitive and it is incumbent on the prosecution to give clear proof of acts or specific conduct on the part of the persons proceeded against. 12 Lah. 457 : 1931 Lah. 191 : 32 P. L. R. 138 : 131 I. C. 585 : I. R. 1931 Lah. 969 : 1931 Cr. C. 311, 131 I. C. 205 : 92 Cr. L. J. 693 : I. R. 1931 Lah. 445 : 1931 Cr. C. 304 : 1931 Lah. 184.

—If a person seeing proceedings under s. 107 Cr. P. C. against
 evidence
 breach
 R. 1930

—a proceeding under s. 107 should contain definite particulars and not mere vague recitals borrowed from the section. 133 I. C. 161 : I. R. 1931 Pat. 321 : 32 Cr. L. J. 1014 : 12 Pat. L. T. 535 : 1931 Cr. C. 795 : 1931 Pat. 347.

—an application under this sec. is not a complaint within s. 4 (4) Cr. P. C. 53 A. 148 : 1931 All. 53 : 32 Cr. L. J. 570 : 1931 All. 294 : 130 I. C. 630 : 1930 A. L. J. 1475 : 1931 Cr. C. 125.

—a Magistrate cannot delegate his power to arbitrators to make an order under this sec. 1931 Pat. 92 : 130 I. C. 810.

—the court should not treat the case of all the opposite parties in a lump but should find out the persons who could definitely be said to have contemplated a breach of the peace. 52 A. 593 : 1930 All. 408 : 124 I. C. 706 : I. R. 1930 All. 562 : 1930 Cr. C. 565 : 31 Cr. L. J. 710 : 1930 A. L. J. 866.

—in a proceeding under this sec. against a number of persons facts and figures must be given in the order of the court showing how each person deserves to be so treated. 34 C. W. N. 144 : 1930 Cal. 224 : 125 I. C. 855 : I. R. 1930 Cal. 631 : 31 Cr. L. J. 914 : 1930 Cr. C. 382.

—where the Sub-divisional Magistrate passed a preliminary order under s. 112 and subsequently the Dt. M. transferred the case to the joint M. for disposal, held that the transfer was valid and the joint M. could dispose off the proceeding. 1930 Mad. 859 : 59 M. L. J. 887 : I. R. 1930 Mad. 1036 : 127 I. C. 652 : 32 Cr. L. J. 27 : 1930 M. W. N. 698 : 1930 Cr. C. 1035.

S. 110—*contd.*

they should reside there. Where the accused say that they are not within the local jurisdiction it is for them to make out the objection. 35 C. W. N. 255: 52 C. L. J. 415: 1931 Cal. 65: 129 I. C. 688: 32 Cr. L. J. 425: 1931 Cr. C. 64.

—a man may be quarrelsome. He may have even threatened the members of the Municipal Board, but this does not make him a desperate character or one dangerous to the community. Even if he throws bricks into people's houses or on the streets, this does not bring his case under this sec. 1931 All. 437: 133 I. C. 335: I. R. 1931 All. 695: 32 Cr. L. J. 1070: 1930 Cr. C. 709.

—Satyagraha Volunteer band who engaged themselves in Hindu-Muslim fight and participated in disorderly activities though they professed non-violence as their creed, were rightly dealt with under this sec. 52 C. L. J. 405: 1931 Cal. 18: I. R. 1931 Cal. 400: 32 Cr. L. J. 593: 130 I. C. 880: 193 Cr. C. 50.

—the mere fact that a person happens to be of a litigious disposition does not bring his case under sec. 110 (f). Cr. P. C. 1930 Lah. 1051: 129 I. C. 276: 32 Cr. L. J. 271: I. R. 1931 Lah. 164: 1930 Cr. C. 1227: 32 P. L. R. 92: 16 A. L. J. 77 *Rel. on.*

—the mere fact that a person is caught while committing adultery does not bring his case under s. 110 (f). Cr. P. C. 1930 Lah. 1051: 1929 I. C. 276: 32 Cr. L. J. 271: I. R. 1931 Lah. 164: 1930 Cr. C. 1227: 32 P. L. R. 92, 30 C. 366 *Ref. to.*

S. 112.

975: 5	1930 Mad.
W. N.	70: 1930 M.
	3 P. C. fol.
110 Cr	clause of s.
in the	as is specified
or mo	refers to two
	appropriate
to the particular case should be mentioned in the notice, 52 A.	
448: 1930 All. 274: 124 I. C. 40: 31 Cr. L. J. 627: 1930 A. L. J. 389:	
I. R. 1930 All. 472: 1930 Cr. C. 442.	

—in passing an order under s. 112 the Magistrate should give in substance an abstract of the facts forming the charge so that the accused may be prepared to meet the charge. requirements vitiates the conviction. Mad. 1036: 1930 M. W. N. 698: 127: 30 Cr. C. 1035: 1930 Mad. 859: 32 L. W. 320.

—the person who is ordered to show cause under this sec. information given by the police not a report under s. 173 Cr. 548 Cr. P. C. 1930 Mad. 975: 32 Cr. L. J. 217: 129 I. C. 70: 1930 Cr. C. 1191: 43 M. 450, 47

S. 117.

—joint inquiries under s. 117 Cr. P. C. are not illegal even when the part of the inquiry is under s. 110 (f) Cr. P. C. The evidence of reputation should be against them all together and not against each accused separately. 1930 Mad. 873 : 59 M. L. J. 853 : 128 I. C. 449 : 1. R. 1931 Mad. 33 : 32 Cr. L. J. 144 : 1930 M. W. N. 1045 : 1930 Cr. C. 1149. (1925 Mad. 189, 27 C. 78) *fol.* 1923 Cal 35 *Ref. on.*

—an accused ———
for good behaviour &
witnesses for cross-
257 Cr. P. C. 53 M.
J. 618 : 124 I. C. 1 :
N. 178 : 1930 Cr. C. 1149, 1. R.

—s. 117 (3) has apparently been introduced for the purpose of preventing a breach of peace or disturbance of the public tranquillity or the omission of any offence or in the interest of public safety pending inquiry under ss. 108, 109 and 110 Cr. P. C. The H. C. cannot, therefore, under s. 498 Cr. P. C. reduce the security which the M. orders to be furnished although the H. C. can consider whether interim security is not too high. 1930 Lah. 592 : 1. R. 1930 Lah. 594 : 31 Cr. L. J. 812 : 125 I. C. 322 : 1930 Cr. C. 677.

S. 118.

—a proceeding under chapter VIII Cr. P. C. is an inquiry which excludes a trial. Although the procedure prescribed for trials are loosely applied to such inquiry the person in respect of whom the inquiry is made is not an accused but a quasi accused. 9 Pat. 131 : 1930 Cr. C. 455 : 1930 Pat. 274 : 125 I. C. 792 : 1. R. 1930 Pat. 568 : 31 Cr. L. J. 958 : 11 P. L. T. 261.

—it is very questionable whether a person can be bound over on the hypothesis that if certain things happen he may commit a breach of the peace. 1931 M. W. N. 402, (2 Weir 49, 26 A. 190, *Ref.*

—from an order of the additional Dt. M. under s. 118 an appeal lies to the District Magistrate under s. 406 Cr. P. C. and not to the Sessions Judge. 32 P. L. R. 453 : 32 Cr. L. J. 849 : 132 I. C. 206, 48 C. 874 *Ref.*

S. 122.

—s. 122 Cr. P. C. prescribes the procedure for listening the fitness of the sureties by the Magistrate, and the fact that the order accepting or rejecting a surety is an appealable order indicates that the Sessions Judge has no such power. 1930 Pat. 217 : 125 I. C. 156 : 9 Pat. 741 : 1. R. 1930 Pat. 508 : 31 Cr. L. J. 802 : 1930 Cr. C. 425.

S. 123

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S. 123—*contd.*

—the person ordered to be detained in prison for failure to give security must be considered as a person undergoing a sentence of imprisonment and not generally as an undergoing prisoner detained in custody and when a sentence of imprisonment is ultimately passed the period must be taken to commence from the date of the above order. 1931 Oudh. 387 : I. R. 1931 Oudh. 358 : 134 I. C. 406 : 32 Cr. L. J. 1166 : 1931 Cr. C. 819.

—order of committal to or detention in prison is a "sentence" within the meaning of s. 397 Cr. P. C. 1931 Rang. 127 : 9 Rang. 110 : 32 Cr. L. J. 714, 131 I. C. 501 : 1931 Cr. C. 522.

—the Sessions Court before which proceedings are laid under s. 123 (2) has neither the duty nor the power to treat sureties offered. 1930 Pat. 217 : 125 I. C. 156 : 31 Cr. L. J. 802 : 1930 Cr. C. 425 : 9 Pat. 741 : 1930 Cr. C. 425.

S. 133.

—the word "community" used in para 3 cannot be distinguished from the words "public" or "neighbours". Hence an act found to be injurious to the physical comfort of the neighbours must be held to be so to the physical comfort of the "community." 1931 All. 433 : 1931 A. L. J. 912 : 1931 Cr. C. 705, (57 I. C. 829, 34 C. 73, 25 C. 425) *Rel. na*

—the expression "on taking such evidence, if any, as he thinks fit" does not make it incumbent on the Magistrate, to hold an inquiry regarding an alleged encroachment on a public road without issuing notice to the opposite party and without permitting him to file written statement and to produce evidence. 1931 All. 257 : 32 C. L. J. 565 : 130 I. C. 627 : 1930 A. L. J. 1335 : 1931 Cr. C. 417.

—this sec. is not intended for long standing obstructions but for an unlawful obstruction lately built. 1930 Lah. 261 : 120 I. C. 796 : 31 Cr. L. J. 167 : 1930 Cr. C. 965 : I. R. 1930 Lnh. 158

—when a party is directed or ordered under s. 133 Cr. P. C. to inquire that it is his private land but on the M. to inquire whether
1930 Cr. C. 335 : 31 Cr. L. J. 53 :

—in a proceeding under s. 133, in respect of an alleged public right of way, if the opposite party denies the existence of the right, the court cannot proceed under s. 137 or s. 138 without deciding under s. 139-A whether there is any reliable evidence in support of his denial. 1930 Lnh. 1046 : 1930 Cr. C. 1222 : 129 I. C. 222 : 32 Cr. L. J. 250 : I. R. 1931 Lah. 158.

—when a person on receipt of a notice appears it is the first duty of the M. to question him whether he denies the existence of the public path alleged to have been obstructed. If there is any evidence before the M. that the path is a private path he is to stay his hand immediately until the matter of the existence of the public right is decided by a competent civil court. 1930 Cal. 486 : 1930 Cr. C. 798 : 127 I. C. 762 : 57 C. 368 : I. R. 890 : 32 Cr. L. J. 33.

S. 133—*contd.*

—where there is a chabutra obstructing a public way the fact that in a particular case the public may have lot of room to go along the road without needing to walk upon that particular site of the chabutra, has nothing to do with the case and the authorities may secure its removal. 1930 All. 751; 128 I. C. 604; 32 Cr. L. J. 160 1930 Cr. C. 1007; I. R. 1931 All. 762.

—there is nothing in law to prevent a M. from drawing up fresh proceedings under this sec. on fresh materials. 34 C. W. N. 957; 32 Cr. L. J. 169; 1931 Cal. 2; 128 I. C. 810; I. R. 1931 Cal. 106; 1931 Cr. C. 34.

S. 135

—a member of the District Board is not unsuitable person to be nominated by the District Board to serve on a jury in case of dispute wherein the Dt. Board is interested. 1931 All. 257; 130 I. C. 627. 32 Cr. L. J. 565; 1930 A. L. J. 1335; I. R. 1931 All. 291; 1931 Cr. C. 417.

S. 137.

—the provisions of this sec. are mandatory. When a person appears to show cause the M. is bound to take evidence as in a summons case. Where he omits to do so the procedure is illegal and is liable to be set aside in revision by the H. C. 11 Lah. 247; 125 I. C. 613; 1930 Lah. 662; 3 Cr. L. J. 330; 31 Punj. L. R. 503; I. R. 1930 Lah. 629; 1930 Or. C. 806, 1931 Oudh. 397; I. R. 1931 Oudh. 352; 13; I. C. 800; 32 Cr. L. J. 1165; 1931 Cr. C. 829; 8 O. W. N. 651.

—the notice calling upon the opposite party to show cause must specify what to be done, in regard to the obstruction. 1931 Lah. 62; 32 Punj. L. R. 11; 130 I. C. 534; 32 Cr. L. J. 621; 1931 Cr. C. 142.

S. 139 (2)

—when the M. finds that there is reliable evidence in support of the contention that there is no public right all he has to do under this sec. is merely to stay the proceedings until the right has been decided by the civil court. The provisions of sec. 140 (f) do not apply to such stay and the M. cannot compel either party to go to the civil court. 1930 All. 658; I. R. 1930 All. 660; 52 All. 592; 1930 A. L. J. 815; 125 I. C. 452; 31 Cr. L. J. 839.

S. 139-A

—the provisions of s. 139-A are mandatory. If there is any

by the opposite party. The inquiry being a summary one it is not intended that the first party should be required to adduce

S. 144—*contd.*

quashed. Held also where there are special facts relating to a particular locality as in which the local authority is the best Judge the opinion of that authority will not easily be disturbed; but where there are no special circumstance and the matter is one of general impression, the absence of any near or reasonable connection between the prohibited act and the supposed danger to the public tranquility will be a ground upon which the H. C. will act. 1931 Mad. 236 : 1930 M. W. N. 841 : 60 M. L. J. 378 : 1931 Cr. C. 332.

—where the evidence on record does not show the existence of any urgency of apprehended danger to public place an order under this sec. is not warranted. In this case an order prohibiting the hoisting of national flaga in Rajah mundry was found to be illegal and was set aside. 1930 M. W. N. 849 : 1931 Cr. C. 362 : 60 M. L. J. 370.

—*prima facie* it is for the M. who knows the local conditions, to say whether an emergency exists or not and the H. C. will not ordinarily interfere with the prohibitory order of the M. unless there is clear evidence that an reasonable man could hold that there was an emergency and that the M. did not act *bona fide*. 34 B 322 : 1931 Bom. 135 : I. R. 1931 Bom. 252 : 130 I. C. 396 : 32 Cr. L. J. 507 : 33 Bom. L. R. 59 : 1931 Cr. C. 183.

—all injunctions must be clear and definite. Those who have to obey them should have no cause to complain that they did not understand what the order meant. 36 C. W. N. 248.

—proceedings under s. 144 being judicial the accused has a right to know what the information was on which the M. acted in order to show that it was unfounded or insufficient. 1930 M. W. N. 849 : 60 M. L. J. 370 : 1930 Cr. C. 362.

—an order by the Dt. Magistrate, Belgium prohibiting the holding of *Probhat Pheris* (Mourning Round) by the public is a judicial and not an administrative order. In such case the M. must keep an open *mind* and record the evidence essential for the judicial determination of the objection and should not refuse to record evidence. 1931 Bom. 325 : I. R. 1931 Bom. 456 : 134 I. C. 344 : 1931 Cr. C. 581 : 32 Cr. L. J. 1141 : 33 Bom. L. R. 673, (14 B. 165, 16 Bom. L. R. 684, 33 Bom. L. R. 59, 19 M. 18, 53 M. 320) *fol.*

—where in a paddy cutting case the accused pleaded that the warning issued by the M. in the proceeding under s. 144 was not communicated to him, it was for him to show that the warning was
 come to hear of the
 I. R. 1931 Cal 447 :

“vague it does not make the whole order bad when the other portion is clearly separable. When a prohibition is directed against A and B and the prohibition against B is found to be bad it may be good against A. Similarly when the order is addressed to “A and B and all other persons who may be concerned in the project” it is bad

S. 144—*contd.*

against persons not named but the order may be nevertheless a good one against A and B. 55 B. 322; 1931 Bom. 135; 130 I. C. 396; 1931 Cr. C. 183; 32 Cr. L. J. 507; I. R. 1931 Bom. 252; 33 Bom. L. R. 59.

Sub-Sec. (3)

—in formulating an order under a 144 the M. is to show the thing which is prohibited and the persons who are prohibited. Consequently an order addressed to "any other persons who are or may be concerned in the project" is too vague and illegal. 55 B. 322; 1931 Bom. 135; 32 Cr. L. J. 507; I. R. 1931 Bom. 252; 130 I. C. 396; 33 Bom. L. R. 59; 1931 Cr. C. 183.

—an order addressed to the public generally must be limited to the public when frequenting or visiting a particular place. 33 Bom. L. R. 673; 1931 Bom. 325; I. R. 1931 Bom. 456; 134 I. C. 344; 32 Cr. L. J. 1144; 1931 Cr. C. 581; 1931 Cr. C. 581.

—this sub-sec. is an exception to the general rule that an order shall be directed to a particular person. Under that provision the order can be directed to the public generally only "when frequenting or visiting a particular place" such for instance as a market or park or other place within a specified boundary. There is no power to direct the public generally simpliciter. An order prohibiting the public generally and certain persons named in the order from taking part in the procession within the whole of the Municipal Limits is bad in law. 33 Bom. L. R. 1178; 1931 Bom. 513; 1931 Cr. C. 945; 134 I. C. 1237.

—no order can be passed against the public without the limitation as to place. The place must be open to the public as such. The public cannot be prohibited from putting up flags in their private houses and in such a case the house-owners cannot be called members of the public for the purpose of this sec. (1930) 17 M. W. N. 849; 1931 Cr. C. 362; 60 M. L. J. 370.

Sub. sec. (4)

—when an *ex parte* order is called in question under this clause the normal procedure should be to record the evidence in the usual way by examination and cross-examination of the witnesses in open court. The proceeding being a judicial one it is desirable that normal procedure, whenever possible, should be adopted. 1931 Mad. 236; 60 M. L. J. 376; 1931 Cr. C. 332; 1930 M. N. N. 841.

S. 145

—The provisions of chap. XII are intended to provide speedy remedy in cases of disputes with which that chapter deals, in order that the matter may be settled temporarily which more lengthy civil proceedings take place. 53 A. 215; 1931 All. 14; 129 I. C. 441; 1931 All. 169; 32 Cr. L. J. 309; 1930 A. L. J. 1437; 193 Cr. C. 14.

—the words of this sec. must be given their plain meaning without adding to them any explanatory words such as "inconvenient" or "immediate". 35 C. W. N. 1003; 33 Cal. 33 Fol.

S. 145—*contd.*

—this sec. requires that there must be a present dispute and a likelihood of the breach of the peace, *i. e.*, there must be present fear that it is probable that there will be breach of the peace owing to the dispute if no proceedings are initiated. This does not mean that orders under the sec. are to be made when some body comes and says that he fears that a breach of the peace will ensue a considerable time ahead. The sec. applies when there is existing fear that unless steps are taken under this sec. a breach of the peace will occur before the authorities responsible for law and order can prevent it. 35 C. W. N. 1003.

—the words "a dispute likely to cause a breach of the peace concerning any land or water or the boundaries thereof" do not limit the competency of the Magistrate to deal under ss. 145 and 146 with such disputes only as arise between two opposing parties having adverse rights to exclusive possession 32 Bom. L. R. 340; 1930 Bom. 172; 125 I. C. 718; I. R. 1930 Bom. 382; 31 Cr. L. J. 933; 1930 Cr. C. 548, 11 C. W. N. 512 *Diss.*

—in order to take action under this sec. the M. must be satisfied that at the time of drawing up the proceedings there is then a likelihood of breach of the peace arising from the disputes between the parties. 34 C. W. N. 899; 1930 Cal. 715; I. R. 1931 Cal. 226; 1930 Cr. C. 1115; 129 I. C. 610.

—proceedings under s. 145 cannot be started on the basis of a police report more than three months old there being no likelihood of a breach of the peace when the M. actually drew up the proceedings 34 C. W. N. 899; 129 I. C. 610; 1930 Cal. 715; I. R. 1931 Cal. 226; 1930 Cr. C. 1115, 2 Pat. L. T. 615 *Approved*.

—an order under this sec. is in the nature of a police order admissible as evidence of the facts as to who was declared entitled to retain possession and the order admissible against all persons when the fact of possession on the date of the order has to be ascertained. But to the parties to the proceeding such an order is admissible as evidence regarding possession before two months of the date of this order. 57 C. 987; 34 C. W. N. 358; 128 I. C. 951; I. C. 1931 Cal. 75; 1930 Cal. 450.

—when once the M. raises the attachment and drops further proceedings in the case he has no jurisdiction to direct the delivery of possession of the disputed property to any person. 1930 M. W. N. 771.

—an order under s. 145 is merely declaratory and lasts only until the party in whose favour it is made is evicted in due course of law. It cannot bar the granting of restitution by a civil Court under s. 144 Civil Pr. Code. A suit for regaining possession by the opposite party is not always necessary and restitution validly made by a Court can be regarded as eviction in due course of law. 58 C. 1070; 35 C. W. N. 483; 134 I. C. 906; 1931 Cal. 909.

—the Magistrate can pass a preliminary order under s. 145 (1) merely on an examination of the applicant before him and without any other materials.

S. 145—*contd.*

—If the M. in the course of his preliminary order directs that both the parties be restrained from entering the property and its compound until further orders, the order is *ultra vires*. 1931 Rang. 51 : 131 I. C. 63 : I. R. 1931 Rang. 127 : 32 Cr. L. J. 637 : 1931 Cr. C. 153.

—where interim receivers are appointed to manage the suit properties in the proceedings the possession which these receivers exercise may justly be regarded as possession on behalf of the party who eventually succeeds 58 C. 1070 : 35 C. W. N. 483 : 134 I. C. 906 : 1931 Cal. 96, 30 C. W. N. 41 *Ref.*

Sub-Sec. (4)

—this sub-sec implies a duty on the court to summon such witnesses as may be mentioned to the Court by either party. Where the court fails to give an opportunity to the party to produce his evidence, the order under s 145 should be set aside. 52 A. 91 : 1930 All. 319 : 125 I. C. 463 : 31 Cr. L. J. 839 : 1930 A. L. J. 484 : 1930 Cr. C. 432.

—the material date for the computation of the period of three months is the date of the order by the M. and not the date of complaint 1931 Nag. 38 : 130 I. C. 153 : 26 N. L. R. 377 : 1931 Cr. C. 222, 52 M. 66 *Dist.*

—in the case of an attachment under s 145 cl (4) second proviso, there is no express provision in the section as to how the M. should deal with property after attachment. 1930 M. W. N. 771.

Sub-Sec. (5)

—under s 145 (5) if any party or other person interested denies the existence of a dispute, the onus lies on him to show that it does not exist. 134 I. C. 1020 : 8 C. W. N. 1182 : I. R. 1931 Oudh 428.

S. 146.

—where the eldest brother is entitled to possession as manager of the Hindu joint family and the junior members is not of peace an order binding on would be proper. 32 Bom. L. R. 112, 125 I. C. 718 : I. R. 1930 Bom. 382 : 31 Cr. L. J. 933 : 1930 Cr. C. 518, 28 Bom. L. R. 488 *Ref. to.*

S. 147.

—this section applies to disputes as regards entry into a temple or mosque and it would so apply whether the right claimed is based on *assamant* or otherwise. 1930 All. 452 : I. R. 1930 All. 886 : 127 I. C. 422 : 31 Cr. L. J. 1217 : 1930 Cr. C. 672.

—entry in U. P. while saint is covari
I. R. 1930 All.

S. 147—*confd.*

—the M. has power under s. 147 to pass an order directing the removal of obstruction to pathways even though such an order may be in the nature of a mandatory injunction. 1930 M. W. N. 987: 59 M. L. J. 430: 1930 Cr. C. 1121: I. R. 1931 Mad. 212: 129 I. C. 68: 32 Cr. L. J. 215: 1930 Mad. 865, 26 M. L. J. 233 *fol.* 30 C. W. N. 238 *not fol.*

—the words "and shall thereafter inquire into the matter in the manner provided in s. 145" merely mean that after the order is drawn up according to the earlier part of the sub-sec., the procedure in the inquiry is then to follow the course laid down in s. 145 and it is immaterial whether the inquiry itself was instituted before or after the drawing up of the order requiring the parties to attend the Court. 1930 Pat. 349: 31 Cr. L. J. 791: 125 I. C. 143: 1930 Cr. C. 721: I. R. 1930 Pet. 495.

—the words "institution or inquiry" in the proviso to cl. (2) mean the date on which the complainant first brings his grievances to the notice of the Magistrate either directly or indirectly through the Police and the M. takes preliminary action. Consequently the period of three months is to be calculated from the date the complainant first approaches the M. and not from the date of institution of formal proceedings. 1930 Pat. 349: 31 Cr. L. J. 791: I. R. 1930 Pat. 495: 125 I. C. 143: 1930 Cr. C. 721, 44 C. L. J. 214 *fol. contrn.*, 1930 Pat. 291: 122 I. C. 145. 31 Cr. L. J. 361: 1930 Cr. C. 608.

—"three months" are not the three months prior to the order but three months next before the institution of the inquiry. 1930 All. 452: 31 Cr. L. J. 1217: 1930 Cr. C. 672: I. R. 1930 All. 886: 127 I. C. 422.

—where the only use the M. has made of the police report is the use contemplated by sec. 147 (1) it is not necessary for him to call on the police officer to depose to the correctness of the report. 1931 All. 14: 129 I. C. 441: 53 A. 215: I. R. 1931 All. 169: 32 Cr. L. J. 309: 1931 Cr. C. 14: 193 A. L. J. 1437.

—the words "to exercise" mean much less than "successfully and completely to assert." A very small gesture on the part of the people obstructed might be considered as "exercise". 1931 Mad. 495: 133 I. C. 5: 1931 Cr. C. 559: 32 Cr. L. J. 972: 1931 M. W. N. 554: 32 Cr. L. J. 972, 21 Bom. L. R. 1058 *not fol.*

—an order under s. 147 (3) can be made only in a case where it is shown that no right of way exists. 1930 Pat. 291: 31 Cr. L. J. 361: 122 I. C. 145: 1930 Cr. C. 608.

S. 149.

—Chapter XIII and Chap. XIV cannot be said to be mutually exclusive. It cannot be said that because a police officer is investigating, therefore he is not doing anything under any other chapter or vice versa. 58 C. 1312: 35 C. W. N. 632: 1931 Cal. 745: 1931 Cr. C. 1009.

S. 154.

—statements made in the course of an investigation under Chap. XIV are not "charges" as contemplated by s. 211 I. P. C. 1931 31 W. N. 1138; 61 M. L. J. 860 34 L. W. 858, [31 M. 506, 1 Weir 193.

—"First information" or "first information report" is not mentioned in the Code, but these words are always used to mean information recorded under this sec. The conditions as to the record of the information under this sec. are: (1) it must be an information relating to the commission of a cognizable offence; (2) it must be given to an officer-in-charge of a police station; (3) it must be put in writing and if already written, it must be signed by the person giving it, and if it is oral it must be taken down in writing and read over to the informant; (4) the substance of the information shall be entered in a book. The information which starts the investigation is the real first information; it does not depend on the sweet will of the police officer who may or may not have recorded it. It cannot be said that any sort of information would fall under s. 154 so long as it was the first in point of time. In a suitable case information under s. 154 may be recorded even in the course of investigation by a police officer; on a construction of the two statements made to the police in the present case it was held that the last statement alone related to a cognizable offence and it was that statement which would be treated as the first information report 58 C. 1312; 35 C. W. N. 623; 1931 Cal. 745; 1931 Cr. C. 1009.

—the failure of the Police Officer to comply with the express provision of the section in omitting an entry of the information in the station diary would have an important bearing if the real date of the report was in question, but where it is not, there is no question of prejudice to the accused. 1931 Pat. 150; 131 I. C. 17; 32 Cr. L. J. 638 1931 Cr. O. 390; 12 Pat. L. T. 393.

—a telephonic message sent to the Police by a doctor of a Civil Hospital to the effect that there was some one in the Hospital with a hatchet wound, but without mentioning that an offence had been committed, cannot be treated as a first information report. 1931 Sind 13; 32 Cr. L. J. 543; 130 I. C. 387; 1931 Cr. C. 61.

S. 156.

Cr. C. 390.

S. 160.

—s. 162 is not confined to statements taken by reason of powers given to the Police under s. 160 Cr. P. C. 1930 Pat. 126 I. C. 851; 1 R. 1930-Pat. 643; 31 Cr. L. J. 1123; 9 Pat. 11 Pat. L. T. 754; 1930 Cr. C. 938.

S. 161.

—a refusal to answer questions put by a police officer making an investigation under chapter XIV is not punishable under s. 179 I. P. C. 1931 Rang. 26 : 8 Rang. 511 : 128 I. C. 833 : 32 Cr. L. J. 201 : I. R. 1931 Rang. 49 : 1931 Cr. Q. 16.

S. 162

—the provisions of s. 162 have been enacted for the benefit of the accused. The policy underlying the rule contained in the sec. is that the witness at the trial should be free to make any statements in favour of the accused, which they should wish to make, unhampered by anything which they might have said or might have been made to say to the police. The result of witness's signature having been obtained on their statements reduced into writing would be to tie them down to the statements so recorded at any rate to give them the impression that they were not free to make a different statement. Where therefore the Police Officer obtains the signature of the witnesses to statements made by them in contravention of s. 162, the evidence of such witness must be rejected, because it is not a mere irregularity which can be covered by s. 537 but a clear illegality being a direct breach of mandatory provision of law. 1931 Oudh 172 : 132 I. C. 234 : 32 Cr. L. J. 860 I. R. 1931 Oudh. 250 : 4 O. L. J. 438 : 1931 Cr. C. 444.

—when it is desired to direct the matter before the Sessions Judge and the Jury and show in an affirmative manner that the witnesses for the prosecution cannot be relied on it is the duty of the defence to prove through the investigating officer the record of the statements made to the Police by the witnesses for the prosecution during the stage of investigation. 35 C. W. N. 164 : 134 I. C. 763 : I. R. 1931 Cal. 875 : 32 Cr. L. J. 1245 : 1931 Cr. C. 806 : 1931 Cal. 622.

—although an information under s. 154 may be recorded in the course of an investigation, the offence is not under investigation until the first information is recorded. Where on a construction of a series of statements made to the Police it was found that the last in point of time really constituted the "first" information, the prior statements to the police were held not inadmissible because of s. 162. 53 C. 1312 : 35 C. W. N. 623 : 1931 Cal. 745 : 1931 Cr. C. 1009.

—In the course of a Police investigation started on information given by a person the latter made a statement before the Police Officer who recorded it. Subsequently the same statement was recorded against the accused. The court held that it was inadmissible. 1931 Cal. 637 :

1931 Cal. C. 831 : 134 I. C. 1509.

—the power of the Judge under s. 165 Evl. Act cannot be exercised for the purpose of introducing evidence in contravention

S. 162—*contd.*

of s. 162. Where the Judge put to a witness certain alleged statements of the prosecution witnesses, which had not been proved, for the purpose of contradicting him, the procedure vitiated the trial 58 C. 1009 : 35 C. W. N. 317 : 1931 Cal. 189 : I. R. 1831 Cal. 543 : 132 I. C. 159 : 32 Cr. L. J. 841 : 1931 Cr. C. 253.

—the effect of the amendment of 1923 is to annul the

foundation laid by way of cross-examination showing that the statements are wanted to contradict the witness. 1930 Sind. 153 : 24 S. L. R. 239 : 31 Cr. L. J. 592 : I. R. 1930 Sind. 113 : 1930 Cr. C. 617 : 123 I. C. 689 : 53 A. 94 : 1931 All. 34 : 130 I. C. 696 : I. R. 1931 All. 312 : 32 Cr. L. J. 578 : 1931 A. L. J. 101 : 1931 Cr. C. 207 : 1931 All. 273 : I. R. 1931 All. 139 : 129 I. C. 267 : 32 Cr. L. J. 370 : 1931 Cr. C. 337 : 53 A. 458 : 32 Cr. L. J. 562 : 1931 A. L. J. 157 : 1931 All. 262 : I. R. 1931 All. 269 : 130 I. C. 625 : 1931 Cr. C. 422.

—where the only reason recorded for refusing copies was that the statements had not been recorded in full and that all that of the same, held that the reason was illegal. 53 A. 458 : 1931 All. L. J. 562 : 1931 A. L. J. 157 : 130

—oral request to grant copy of such statements should be entertained as the law does not prescribe any application. The M. need not ask the accused the reason for such an application because the general purpose is to contradict a witness. Conduct of M. in delaying and ultimately refusing to furnish copies of statements made to police is a matter of condemnation and is a ground for transfer. 1930 All. 737 : 123 I. C. 685 : 1930 A. L. J. 606 : 31 Cr. L. J. 556 : 1930 Cr. C. 993.

—the fact that the statement of the witness before the Police does not in the opinion of the M. contradict the evidence given before him is no reason for refusing to grant the copy. 1930 Sind. 153 : 24 S. L. R. 239 : I. R. 1930 Sind. 113 : 123 I. C. 689 : 31 Cr. L. J. 592 : 1930 Cr. C. 617, (1927 Pat. 325 : 54 O 307, 7 Pat. 205, 52 B. 195) Dist. 8 Pat. 279 Ref.

—this
investigative
like this :—
to such and
J. 682 : I. R. 1930

—this sec. does not prevent a police officer from explaining his conduct to the accused persons for trial by jury. 185 : 122 I. C.
to such
31 Cr. L. J. 111

S. 162—*contd.*

—when a M. went through a police diary and observed that certain discrepancies in the evidence of the prosecution witnesses were not material to the facts in issue, it may be fairly inferred that he was presumably influenced by other parts of the diary corroborating the witnesses. Such use of diary being illegal the conviction was set aside. 1931 Pat. 96: 32 Cr. L. J. 735: I. R. 1931 Pat. 215: 131 L. C. 535: 11 Pat. L. T. 837: 1931 Cr. C. 192.

—reference in the judgment of the M. not only to the statements of prosecution witnesses made to the police which had not been examined at all in the trial vitiates the finding of the Magistrate. 1930 Lah. 318: 10 Lah. 794: 31 P. L. R. 742: 1930 Cr. C. 350: 31 Cr. L. J. 343.

—s. 162 is intended to prevent the use of statements made by the accused to the Police, and questions designed to show, by process of elimination, that matters subsequently mentioned by the accused were omitted from such statements, are within the mischief aimed at by the sec. 55 B. 435: 1931 Bom. 311: 133 L. C. 748: I. R. 1931 Bom. 396: 1931 Cr. C. 567: 32 Cr. L. J. 1077: 33 Bom. L. R. 305.

—the words "any person" comprehend a person who subsequently becomes accused and the words "any purpose" include purpose of prosecution or defence. So a statement made by the accused to a police officer in the course of his investigation immediately after the accused pointed out to the police the place of hiding the jewels worn by the murdered boy is not admissible in evidence, though it may materially assist the defence, though it is open to the accused to repeat that statement in court and call witnesses to support that statement. 1931 Mad. 779: 1931 Cr. C. 1035: 1931 M. W. N. 715: 34 L. W. 388, 44 C. L. J. 253, 5 Pat. 63, 4 Bom. 797 Lah. 84 not fol

appraising the worth of a confession which in every other adicary. Where the accused at police station and made a confessional statement confessing his guilt and the lower court recorded the statement up to the point where the accused said he cut his wife, held that the proper course was not to record the statement at all. 1931 M. W. N. 725.

—a statement made by the accused to the Police immediately after they were seized explaining the circumstances which brought them to the scene of occurrence when at variance with that made by them in Sessions Courts, is admissible as showing that of innocent person.

of the statement made to ascertain the purpose Where the prosecution

S. 162—*contd.*

rely upon the statement as corroborative proof of certain facts deposed to by the prosecution witnesses and not with the object of proving their falsity the statement is not admissible in evidence. 1930 Sind. 225 : 126 I. C. 419 : I R. 1930 Sind. 241 : 31 Cr. L. J. 1026 : 1930 Cr. C. 865, (1925 Sind. 237, 6 Bom 34, 14 Bom. 260 F. B., 19 Bom. 362, 1926 Sind. 151) *Rel on.*

—brief statements of witnesses incorporated in the inquest report can be made use of under this sec., but apart from that, they cannot be used as evidence. 1930 Lah. 457, 1930 Cr. C. 561 : I. R. 1930 Lah. 363 : 122 I. C. 491 : 31 Cr. L. J. 444.

—the infringement of the provisions of the sec. is irregularity which can be cured under s. 537 if it has not occasioned a failure of justice. The test is whether any vital rule of procedure has been broken and whether the irregularity goes to the root of the proceedings. 54 M. 931 : 1930 Bom. 595 : 32 Bom. L. R. 1279 : 129 I. C. 156 : 32 Cr. L. J. 239 : 1930 Cr. C. 1182, 35 C. 61 *Applied.* 45A. 124, *Ref.*, 28 I. A. 257 *Dist.*

—the proposition that because a person of the party of the accused goes first to the Police Station and accuses some of the complainant's party the real complaint lodged later on under s. 154 against the accused must be kept off the record save on terms under s. 162, is one which cannot be judicially approved. 1930 Cal. 130 : I. R. 1930 Cal. 495 : 125 I. C. 111 : 31 Cr. L. J. 771 : 1930 Cr. C. 130.

—the statements of witnesses referred to in s. 162 should not be entered in the special diary which should merely record the steps taken by the Police Officer in the investigation. 1931 Pat. 150 : 131 I. C. 17 : 12 Pat. L. T. 393 : 1931 Cr. C. 290 : 32 Cr. L. J. 638.

—when a witness makes a certain statement in the Court, and

—under this sec. a statement made before the Investigating Police Officer can be used for contradicting the witness when produced at the trial after strict compliance with the provisions of sec. 145 Evi. Act. When the witness admits the previous statement it need not be proved. If he denies to have made such statement the relevant portion contrary to his statement in court must be read to him and the witness must be given an

S. 162—*contd.*

opportunity to reconcile the same. It is only after then that the record of the previous statement becomes admissible and can be proved. 1930 Lah. 491; 126 I. C. 573; 11 Lah. 460; I. R. 1930 Lah. 765; 31 Cr. L. J. 1071; 31 P. L. R. 797; 1930 Cr. C. 603; and only the portions thus proved are parts of the judicial record. The other parts of those statements cannot be relied on by the prosecution or the defence in determining the guilt or innocence of the accused. 1930 Lah. 449; I. R. 1930 Lah. 162; 1930 Cr. C. 553; 121 I. C. 66; 31 Cr. L. J. 199.

—this sec. does not exclude a statement before a Bombay Police Officer from being proved except in so far as it is inadmissible under the Bombay City Police Act. 54 Bom. 528; I. R. 1930 Bom. 429; 31 Cr. L. J. 1003; 126 I. C. 333; 32 Bom. L. R. 327; I. R. 1930 Bom. 429; 1930 Cr. C. 482.

—where the statement made to the police was a statement made by the witness jointly with another person the M. might refuse the application made under a. 162. 36 C. W. N. 106.

S. 164.

—before recording a confession it is the duty of the Magistrate or the Judge to question the prisoner as to the circumstance under which it was made. 1931 All. 609; 33 I. C. 593; 1931 Cr. C. 961; I. R. 1931 All. 705; 32 Cr. L. J. 1052; 1931 All. 609; 1931 A. L. J. 1000.

—before recording a confession the M. should inquire how long the accused had been in custody. The failure to do so is, however, no irregularity and does not invalidate or cast any doubt upon the genuineness and voluntary nature of the confession. 1931 Lah. 763; 1931 Cr. C. 1067; 32 Cr. L. J. 985; 133 I. C. 55; I. R. 1931 Lah. 727.

—where the confession was recorded on a Sunday and at the house of the M. and the M. while certifying and stating on oath as a witness that he satisfied himself that the accused was making a statement voluntarily did not record the questions and answers put and it was further objected that the statement was recorded in English though made in Urdu held that the irregularities in recording the confession did not render it inadmissible. 1931 Lah. 763; 32 Cr. L. J. 985; I. R. 1931 Lah. 727; 1931 Cr. C. 1067; 133 I. C. 55.

—where the confession was not taken down in the language in which it was made and it was not signed or thumb-marked by the accused but the M. deposed that the confession was made voluntarily and was correctly recorded, held that the other irregularities in recording the confession was not material. 32 P. L. R. 792; I. R. 1931 Lah. 785; 133 I. C. 545; 32 Cr. L. J. 1036.

—where the M. recording a confession proceeds to certify that

S. 164—*contd.*

—where the M. fails to append to the record the necessary certificate s. 533 Cr. P. C. comes into operation and on proof of the M. that he had complied with the provisions of sec. 164 the record becomes admissible. S. 533 is by its terms confined to confessions or statements recorded under s. 164 or s. 354. 1930 Lah. 534 : 32 Cr. L. J. 290 ; 1930 Cr. C. 682 ; I. R. 1931 Lah. 177 : 129 I. C. 289.

—omission to take signature of confession through mistake may be cured by s. 533 Cr. P. C. if the M. and his clerk be examined at the trial. 1930 Rang. 53 : 31 Cr. L. J. 297 : 1930 Cr. C. 245 : 7 Rang. 759 : 121 I. C. 782.

—the provisions of sec. 164 are imperative. Where the M. after recording the confessions made them over to the police officers the procedure was objectionable. 1931 Lah. 408. 132 I. C. 185 : 32 Cr. L. J. 818 : 1931 Cr. C. 648 : I. R. 1931 Lah. 537.

—a confession cannot be recorded by a Magistrate after the case has been sent up to him for inquiry. The fact that the Magistrate returned the challan after taking cognizance of the case but before recording the confession is immaterial. 1930 Lah. 454 : I. R. 1930 Lah. 460 : 30 Cr. L. J. 533 : 123 I. C. 540 : 1930 Cr. C. 558.

—a Magistrate who records a confession may question the person making the confession as regards any ambiguity in the statements, but he cannot cross-examine him or endeavour to get particular statement out of him. 128 I. C. 593 : 32 Cr. L. J. 152 : I. R. 1931 All. 65 : 1930 Cr. C. 1002 : 1930 All. 746 : 1930 A. L. J. 1105.

—after the preliminary question for satisfying himself that the prisoner is making the confession voluntarily and understands the consequence of making such a confession, the Magistrate must allow the prisoner to make whatever statement he likes; he should not put to him any question regarding his guilt and elicit an answer. 1930 Lah. 454. 31 Cr. L. J. 533 : I. R. 1930 Lah. 460 : 123 I. C. 540 : 1930 Cr. C. 558.

—it is not necessary that the M. recording confession must give warning to the accused immediately before the confession is recorded. Where the M. allows the prisoner seven hours' time to think over the question and to decide whether he would make a confession or not and then records the confession the recording is not improper. 1930 Sind. 305 : I. R. 1931 Sind. 12 : 32 Cr. L. J. 178 : 128 I. C. 684 : 1930 Cr. C. 1142.

—the genuineness or the truth of the confession and the fact of its being voluntarily made are matters which are within the exclusive province of the Court of Sessions and of the H. C. and neither of these can blindly accept the ready-made opinions of the recording M. on these points without having before it materials from which it could arrive at an independent opinion on these questions. 1930 Oudh. 449 : I. R. 1931 Oudh. 23 : 32 Cr. L. J. 97 : 128 I. C. 215 : 1930 Cr. C. 1073 : 6 Luck. 335.

S. 167.

—the law views with disfavour detention in the custody of the police and even in the case of an accused person such detention can be allowed only in special cases mentioned in this sec. and for reasons to be stated in writing. This provision of the law must be very strictly complied with. 1931 Lah. 476; 12 Lah. 635; 32 P. L. R. 493; 32 Cr. L. J. 913; 132 I. C. 519; 1931 Cr. C. 700.

—a M. acting under this sec. has to weigh evidence to decide whether the prisoner should be detained in custody or not. Weighing of such evidence is a judicial function and not executive. 1930 Lah. 945; 129 I. C. 481; 12 Lah. 16; I. R. 1931 Lah. 193; 31 P. L. R. 780; 1930 Cr. C. 1041.

—an accused person is entitled to have access to legal advice under reasonable restriction even when he is in police custody during the course of an investigation. A person who is merely arrested on mere suspicion during the course of police investigation cannot be placed on a worse footing than an unconvicted criminal prisoner to whom such amenities are allowed under ss. 31 to 33 of the Prisons Act. The conduct of the Police was held clearly wrong in refusing to allow the legal adviser of the accused to interview and their refusal to allow the relatives of the accused to supply him food and clothing was unjustifiable. 32 Cr. L. J. 1022; 12 Lah. 211; 133 I. C. 288; I. R. 1931 Lah. 768; 12 Lah. 435; 1931 Lah. 99; 1931 Cr. C. 163; 32 Punj. L. R. 1, 1930 Lah. 945; 11 Lah. 16; I. R. 1931 Lah. 193; 129 I. C. 481; 31 P. L. R. 780; 1930 Cr. C. 1041.

—the practice of obtaining remand from any M. at the choice of the Police is objectionable. In the absence of special reasons, such as distance or other similar difficulties, the M. in charge of the jurisdiction should be approached for the purpose of remand. 1931 Lah. 99; 12 Lah. 435; 32 Punj. L. R. 1; 1931 Cr. C. 163.

—where the question whether the accused should be remanded to police custody or sent to the judicial lock up has duly been considered by the M. and the accused is remanded to police custody, it cannot be held to be illegal. 32 Cr. L. J. 1022; 133 I. C. 288; 12 Lah. 211; I. R. 1931 Lah. 768.

—where the total period of remand permissible under this sec. has expired, the M. cannot make fresh remands to police custody. The police might at the most ask for remand under s. 344 but in that case the remand can only be to the judicial lock up. 1931 Lah. 99; 12 Lah. 435; 32 Punj. L. R. 1; 1931 Cr. C. 163. In the same case it has been held that the Magistrate remanding an accused person to police custody must state his reasons in writing after being satisfied as to the necessity of remand and the restricted period. See also 1931 Lah. 200; 1931 Cr. C. 320; I. C. 1931 Lah. 239; 129 I. C. 767; 31 P. L. R. 693.

—an approver cannot be detained in the custody of the police. 1931 Lah. 480; 32 P. L. R. 728; 1931 Cr. C. 704; 1931 Lah. 476 *Rel. on.*

S. 170.

—this sec implies a case where the investigation is not complete but where there is "reasonable ground of suspicion to justify the forwarding of the accused to a Magistrate." 1931 All. 617; 133 I. C. 617; 32 Cr. L. J. 1045; 1 R. 1931 All. 729; 133 I. C. 617; 1931 A. L. J. 617

—an investigation under the chapter referred to in the section would include investigation held under s. 155 (3) Cr. P. C. under the orders of a M. 1931 All. 263; 53 A. 407; 32 Cr. L. J. 465; 1 R. 1931 All. 241; 139 I. C. 193; 1931 Cr. C. 423

S. 172.

—the absence of diary cannot prejudice the accused as he is not in a position to know the various steps taken in the course of the enquiry and what witnesses were examined because the statements of witnesses are not to be entered in special diary which should only record the steps taken by the police in the investigation. The diary may be used by Police Officer to refresh his memory in which case the accused can see it, but where there is no diary and no case of refreshing memory the absence of diary cannot vitiate the trial. 1931 Pat. 150; 12 Pet. L. T. 393; 131 I. C. 17; 32 Cr. L. J. 638; 1931 Cr. C. 390

the purpose of corroborating
as given in Court is contrary
1 R. 1931 Pat. 215; 32 Cr.
837; 1931 Cr. C. 192, 44 C.

876 P.C. Ref.

S. 173.

—where in a police report under the column headed "charge or information etc." the sections of the I. P. C. were mentioned but no details of the circumstance, provisions of s. 173 were not complied with and the M. could not proceed with the trial on the basis of such report. 1930 Bom. L. R. 372; 1 R. 1930 Bom. 494; 32 Bom. L. R. 782; 1930 Cr. C. 891; 31 Cr. L. J. 1142; 127 I. C. 110.

S. 176.

—an inquiry made under this sec. by another Magistrate cannot take the place of an inquiry under s. 202 Cr. P. C. Taking such inquest report into consideration is not the proper procedure. 35 C. W. N. 1032.

S. 177.

is appro-
priated in
sec. 55
1930 Cr.

of the
by it
the P.

S. 179.

639, 34 A. 487, 44 C 912, 1 Rang. 56 and 35 C. W. N. 320 and dissented from 19 A. 111, 32 A. 397, 35 A. 29 and 1925 Cal. 613 and explained 6 Rang 380, but see 52 A. 894 : 1930 All. 449 : 125 I. C. 589 : 31 Cr. L. J. 865 : 1930 A. L. J. 849 : 1930 Cr. C. 669, where it is said that the provisions of Chapt. XV of Cr. P.C. are not separately independent of one another so that if one of the provisions applies another would not. Then it cannot be said that s. 379 would not apply to a case of criminal breach of trust because there were certain other provisions under s. 181 (2) which would apply to criminal breach of trust. But contrary view is to be found in 9 Rang 338 : 1931 Rang. 164 : 134 I. C. 209 : 32 Cr. L. J. 1120 : 1930 Cr. C. 660.

—trial for prosecution for offence of cheating by posting V. P. parcels may be held at the place of posting the parcels as well as at the place of payment of money to the accused, the first place being the place of attempt to commit offence and the second place being the place of "consequence." 1930 Bom. 358 : I. R. 1930 Bom. 497 : 127 I. C. 177 : 31 Cr. L. J. 1155 : 32 Bom. L. R. 785 : 1930 Cr. C. 790.

S. 181.

—the offence of criminal misappropriation is triable only by the Court within whose local jurisdiction the misappropriation took place. Whose by the articles of partnership a partner was to manage the business at Rangoon and forward weekly accounts to the Head Office at Bombay, and he misappropriated the firm's money at Rangoon and sent false accounts to Bombay, held that the offence having been committed at Rangoon the Bombay Court had no jurisdiction. The accounts submitted at Bombay were only evidence of the commission of the offence and the consequent loss to the principal was not a part of the offence. 55 B. 59 : 1930 Bom. 490 : 32 Cr. L. J. 331 : I. R. 1931 Bom. 161 : 129 I. C. 385 : 1930 Cr. C. 1026 : 32 Bom. L. R. 1195 F. B. *See also the cases below.*

—where the accused is charged with criminal breach of trust and falsification of accounts or failure to furnish accounts the place where the money is misappropriated should be the right venue for the trial of the offence. 35 C. W. N. 320 : 133 I. C. 703 : I. R. 1931 Cal 751 : 32 Cr. L. J. 1042 : 1931 Cr. C. 673, 1931 Cal. 532 : 134 I. C. 929 : I. R. 1931 Cal 929 : 32 Cr. L. J. 1249 : 1931 Cr. C. 684, 35 C. W. N. 809 : 1931 Cal. 528 : 1931 Cr. C. 680 : I. R. 1931 Cal. 817 : 134 I. C. 433 : 32 Cr. L. J. 1167, but if there is no evidence to show where the misappropriation was committed other than the fact of

S. 181—*contd.*

non-accounting then the venue must be laid in the place where the accused failed to account because that is where the offence was committed. *cf. sec. 181 (2)* 35 C. W. N. 809: I. R. Cr. L. J. 1167: 1931 Cr. C. 680: 931 Cal. 521: I. R. 1931 Cal. 751: 1931 Cr. C. 673

S. 182.

—trial for prosecution for offence of cheating by posting V. P. parcels may be held at the place of posting the parcels or at the place of payment of money to the accused. 1930 Bom. 358: I. R. 1930 Bom. 497: 127 I. C. 177: 31 Cr. L. J. 1155: 32 Bom. L. R. 785: 1930 Cr. C. 790.

All. 358: 32 Cr. L. J. 690: 131 I. C. 246: 1930 A. L. J. 1485: 1931 Cr. C. 127

S. 188.

—an Indian British subject cannot be tried except with the sanction of the Government. 1930 Pat. 501: 122 I. C. 155: 1

foreign Agent 1930 trial 364: iming of an alternative charge of the jurisdiction will not confer 155: 54 B. 171: 125 I. C. 417: 32 Bom. L. R. 98: I. R. 1930

DUMB. 501.

S. 190.

—where a Police report under the heading of charge or information merely recited the contents of the I. P. C. but did not set out the details or circumstances of the case, the provisions of s. 190 (1) (b) Cr. P. C. had been disregarded and that the charge-sheet could not be treated as a complaint. 1930 Bom. 372: 127 I. C. 110: 31 Cr. L. J. 1142: 32 Bom. L. R. 782: I. R. 1930 Bom. 494: 1930 Cr. C. 891 -

requires cognizable A. L. J.

—where a Police report under the heading of charge or information merely recited the contents of the I. P. C. but did not set out the details or circumstances of the case, the provisions of s. 190 (1) (b) Cr. P. C. had been disregarded and that the charge-sheet could not be treated as a complaint. 1930 Bom. 372: 127 I. C. 110: 31 Cr. L. J. 1142: 32 Bom. L. R. 782: I. R. 1930 Bom. 494: 1930 Cr. C. 891 -

—there is nothing to prevent a Dr. M. when moved to set under s. 436 from taking cognizance of his discretion of the complaint under s. 190 (1). 1931 Pat. 50: 32 Cr. L. J. 548: 130 I. C. 529: 12 Pat. L. T. 729: 1931 Cr. C. 146.

S. 191.

—where a M. after examining the police diary comes to the conclusion that the police have not properly investigated the case and that certain person should have been prosecuted, his proper course is to pass an order under s. 190 (1) (C) Cr. P. C. for the prosecution of the man, and in that case the provisions of this sec. would apply and it would be open to the person so prosecuted to ask for a transfer of the case. 1931 All. 273 : 129 I. C. 267 : 32 Cr. L. J. 370 : I. R. 1931 All. 139 : 1931 Cr. C. 337.

S. 192.

—once a case is transferred by a sub-divisional M or a Dt. M. to a subordinate M. he cannot proceed with the case without withdrawing or transferring it back again. 1930 Mad. 705 : I. R. 1930 Mad. 813 : 1930 M. W. N. 413 : 31 Cr. L. J. 895 : 125 I. C. 557 : 1930 Cr. C. 652.

S. 193.

—an order by the Govt. specifying the Judge and the place of trial of a case is open to modification by the H. C. even if it falls within the category of administrative orders. 55 B. 576 : 1931 Bom. 313 33 Bom. L. R. 675 : 134 I. C. 347 : 32 Cr. L. J. 1147 : I. R. 1931 Bom. 459 : 1931 Cr. C. 369.

S. 195.

—when a person has been prosecuted under s. 291 I. P. C. for flagrant disobedience of an order of the court to discontinue a nuisance and acquitted, before anything can be done against him under s. 188 I. P. C. a complaint under this sec. is necessary. 1930 Lah. 1055 : 129 I. C. 224 : 32 Cr. L. J. 253 : 1930 Cr. C. 1231 : I. R. 1931 Lah. 160.

—the requirements of s. 195 regarding a complaint in writing of the public servant concerned, in a case under s. 188 I. P. C. have not been dispensed with by the provisions of S. 11 of 1930). 55 B. 332 : 152 : 32 Cr. L. J. : 1931 Cal. 122 : 32 Cr. L. J. 511 :

—the Commissioners appointed under the Public Servant Act 1850 are a Court though their conclusions are of the forms of advice to superior authority. Consequently a complaint by them is necessary. 1931 Lah. 662 : 134 I. C. 818 : 12 Lab. 391 : 32 Cr. L. J. 1252 : 1931 Cr. C. 924.

—the Court may make a complaint against person under s. 476 Cr. P. C. for an offence under s. 211 I. P. C. if it is of opinion that the proceedings before the Court was caused to be started by that person though he was not a party to the proceeding before it. An offence may be committed by a person in relation to a judicial proceeding though he may not be a party to the proceeding or though it may not have been committed by that person in a judicial

S. 195—*contd.*

proceeding 52 C. L. J. 149; 1930 Cal. 671; 127 I. C. 65; 31 Cr. L. J. 1145; 1 R. 1930 Cal. 817; 1930 Cr. C. 1063.

—s. 195 (1) (b) is a bar to cognizance of an offence under s. 211 I. P. C. alleged to have been committed in or in relation to a proceeding in Court except on complaint in writing by that Court or some other Court to which that Court is subordinate. 1930 Pat. 346; 1 R. 1930 Pat. 319; 123 I. C. 399; 31 Cr. L. J. 494; 1930 Cr. C. 718.

—where no proceedings take place in Court in furtherance of the false information given by the accused it cannot be said that the offence under s. 211 I. P. C. was committed in relation to a proceeding in Court and the complaint of a M. is not necessary under s. 195 (1) (b). 1930 All. 818; 1 R. 1931 All. 145; 129 I. C. 369; 32 Cr. L. J. 314; 1930 Cr. C. 1202.

—s. 195 (1) (c) applies or is not applicable to a proceeding commenced by a party, as much to a document which has been produced in a proceeding. 1931 All. 443; 1 R. 1931 Cr. L. J. 1105; 1931 A. L. J. 65. It has been held in the same case that an offence which has already been committed by a person who does not become a party till, say, 30 years after the commission of the offence, cannot be said to have been committed "by a party" within cl. (c).

—where a person who is not a party to a proceeding is not a party to a proceeding. (c) of Cr. C. 590.

—where an appellate Court in the exercise of its authority under s. 195 (1) (a) Cr. P. C. directs the institution of a complaint under s. 186 I. P. C. the said order is not open to appeal. 1931 All. 630; 1 R. 1931 All. 515; 132 I. C. 419; 1931 A. L. J. 366; 1931 Cr. C. 926.

—where a warrant had been issued by a Judge of the Small Cause Court who sent the proceeding to the Additional Judge after ordering notice, held that the Additional Judge has the power to file a complaint. 1931 Lab. 530; 1 R. 1931 Lab. 632; 32 Cr. L. J. 964; 132 I. C. 842; 1931 Cr. C. 770.

—where the facts of the complaint disclose both minor offences as well as major offences and cognizance cannot be taken of major offence without a complaint from a M. the legal consequence should not be allowed to be evaded by confining the case to the minor offence only. 54 M. 1018; 61 M. L. J. 770; 134 I. C. 813; 1 R. 1931 Mad. 861; 32 Cr. L. J. 1215; 1931 M. W. N. 513; 1931 Cr. C. 942, 1929 M. W. N. 196 *fol.*

S. 195—*contd.*

—when the Act V of 1898 was passed there was an existing jurisdiction of the H. C. to order prosecution for the offence of perjury committed in relation to the appeal. In construing s. 195 (b) it should be born in mind that the rule that no existing jurisdiction of a Supreme Court can be taken away unless the language used in the new enactment purporting to take away that jurisdiction is in the clearest possible terms. 1931 All. 706; 1931 Cr. C. 1042; 1931 A. L. J. 829.

—where "in relation to the proceeding" is used, it refers to the proceeding to which the complaint is made, and not to the proceeding in which the complaint is made. 1931 All. 706; 1931 Cr. C. 1042; 1931 A. L. J. 829.

—a false statement at the committal stage which eventuates in a trial is "in relation to" the trial. When a person makes one statement in the committing Court and contradicts it in the Sessions Court, the Session Judge can complain in the alternative that one or other of the statements must be false. 1931 M. W. N. 1061; 61 M. L. J. 914; 1931 Mad. 778; 134 I. C. 1137; 1931 Cr. C. 1034.

—the Assistant Registrar of the Co-operative Societies, to whom a dispute touching a debt due to a society by a member is referred is a Court within the meaning of this sec. 1930 Mad. 869; 59 M. L. J. 229; 1931 Mad. 216; 1930 M. W. N. 689, 1930 Cr. C. 1125; 32 Cr. L. J. 219.

—the determination of the Superior Court is not confined to the decrees which is appealable. A court shall be deemed to be subordinate to the Court to which appeals ordinarily lie from the appealable decrees. 1930 All. 407; 1930 Cr. C. 631; 1930 A. L. J. 1010; 125 I. C. 753; 31 Cr. L. J. 898; I. R. 1930 All. 737.

—a Panchayat exercising jurisdiction in civil matters is a Civil Court and is subject to the jurisdiction of the Dt. Judge who exercises principal civil jurisdiction. 52 A. 1018; 1931 All. 141; I. R. 1931 All. 580; 1930 A. L. J. 1520; 32 Cr. L. J. 558; 1931 Cr. C. 200.

—the Additional Dt. M. has no jurisdiction to entertain an appeal from a decree of a Court of Session. 1931 All. 141; I. R. 1931 All. 580; 1930 A. L. J. 1520; 32 Cr. L. J. 558; 1931 Cr. C. 200.

com the

S. 197.

... servant it cannot
of the Local Govt.
ied for and refused
931 Cal. 646: 193

Cr. C. 846: 134 I. C. 1189

—no sanction is necessary in respect of a complaint against a
Talati or ... alleged to have used force,
hurt and ... subscription for the Taluk
Agricultu ... 12: I. R. 1931 Bom. 260:
130 I. C. 5 ... L. R. 1493: 1931 Cr. C
225.

—This sec. relates to public servant who is not removable
from his office save with the sanction of the Local Govt. or some
other higher authority. Under s. 9 (2) of the Bombay Act IV of
1923, the administrative officer of the School Board can be removed
from his office without the sanction of the Govt. by the votes of
two-thirds of the whole number of Councillors. Consequently he is
not a public servant to whom s. 197 will apply. 1931 Bom. 527:
134 I. C. 1240: 33 Bom. L. R. 1177: 1920 Cr. C. 953, 56 C 227 Dist.

—a prosecution for an offence arising out of abuse of official
position by an act not purporting to be official does not require
sanction. A liquidator who appropriated to himself money coming
into his custody as liquidator cannot be said even to purport to act
in the discharge of his duty. 1920 Bom. 487: 129 I. C. 344: I. R.
281: 32 Bom. L. R.
. R 1018, 1914 M. W.
iniser of Co-operative-
and also appointed as
istrar is not a public
l from the first men-
him from the post of

liquidator. *same case.*

S. 198.

—in a charge for the principal offence and for abetment of an
offence under s. 496 I. P. C. it is necessary that there should be
complaint under s. 198, Cr. P. C. 1930 M. W. N. 694 1931 Cr. C. 367.

—the possible loss of fees to a spiritual head of a community
(Levvasi) does not make him aggrieved so as to complain for offences
under ss. 496 to 498 I. P. C. 1930 M. W. N. 694: 1931 Cr. C. 367.

—a letter containing a charge of defamation addressed to the
President of the First Class Bench of Ms. with a request by the
complainant that it should be forwarded to the Dt. M. can be
treated as a complaint by an aggrieved person. 1930 M. W. N.
855 F. B.

S. 199.

—what is intended by s. 199 is that there should be a com-
plaint by the husband followed by the ordinary procedure of
before a committing M. Otherwise no charge under the s. should

S. 199—*contd.*

inquired into or heard by the Sessions Court. 53 Cr. L. J. 346 : 134 I. C. 314 : 1931 Cal. 524 : 1931 Cr. C. 676 : 32 Cr. L. J. 1135 : I. R. 1931 Cal. 810

S. 200.

—a joint complaint is not supported by the Code which is supported by the provisions of sec. 200 as to the examination of complainant. 35 C. W. N. 782 : 1931 Cal. 646 : 134 I. C. 1189 : 1931 Cr. C. 846.

—where the person who made the complaint was a co-operancy overseer and acted in the discharge of his official duties under the Calcutta Municipal Act, he was a public servant within the definition of s. 21 I. P. C. and it was not necessary to examine him before issuing process. 34 C. W. N. 449 : 1930 Cal. 665 : 32 Cr. L. J. 138 : 1930 Cr. C. 1037 : I. R. 1931 Cal. 95.

S. 201.

—s. 201 does not cover the case of a M. who is entitled to take cognizance of some of the charges named in the complaint but who is not entitled to take cognizance of a charge not named in the complaint but which could possibly be made out from the allegation in the complaint. 1931 All. 10 : I. R. 1931 All. 129 : 1930 A. L. J. 1422 : 1931 Cr. C. 10 : 129 I. C. 257.

S. 202.

—the practice of issuing a notice to the accused before
... Cr. P. C. is not, as a rule,
34 I. C. 1233 : 1931 Cr. C.
133 I. C. 172 : 32 Cr. L. J.
I. R. 1931 Pat. 332.

—where a complaint is referred by the M. to the Police for inquiry and investigation, the Police need no more than report. But that does not debar the police from exercising their ordinary powers of arrest and investigation. 54 M. 598 : 60 M. L. J. 520 : I. R. 1931 Mad. 512 : 131 I. C. 176 : 1931 M. W. N. 368 : 32 Cr. L. J. 690 : 1931 Cr. C. 1026 : 1931 Mad. 770, 53 R. 339 Diss. from. 2 Pat. 379, *fol.*

—an inquiry may be made under s. 202 for ascertaining the truth or falsehood of the complaint. If it is not intended to supersede a regular trial or justify the M. inquiring as to whether the unproved allegation of the accused exonerates him. The M. is not
1931 Bom. 524 : 1931 Cr. C.
713, F. B.

—It is not improper for the M. holding a preliminary inquiry
... opportunity of explaining
113 : 132 I. C. 479 : I. R.
731, 52 B. 441 Ref.
... preliminary inquiry dismisses
... against the complainant

S. 203—*contd.*

to be entertained in exceptional cases, *e. g.* where the previous order was based on an incomplete record or where the previous order was manifestly absurd or foolish. 1930 Lah. 879: 12 Lah. 9: I. R. 1930 Lah. 815: 127 I. C. 15: 31 Cr. L. J. 1180: 32 P. L. R. 208: 1930 Cr. C. 923, (10 P. R. 1911, 36 C. 415) *Rel. on.* 51 C. 791 *not fol.*

—a complaint having been dismissed by a Sub-divisional M. under s. 203 Cr. P. C. a Sub-Magistrate has jurisdiction to entertain a charge-sheet based on a second complaint, even though the prior order of dismissal has been set aside. There is no difference in principle between the entertainment of a second complaint by the same or a different M. or co-ordinate jurisdiction or a M. of inferior jurisdiction. 1931 M. W. N. 1149, F. B., 29 M. 126, 28 C. 211 *fol.*

S. 204.

—a *prima facie* case only means that there is ground for proceedings, it is not the same thing as "proof" which comes later when the Court has to find whether the accused is guilty and is nothing but belief according to the conditions laid down in the Evi. Act. The evidence discloses a *prima facie* case if it is such that if uncontradicted and if believed it will be sufficient to prove the case against the accused. The M. is not bound to issue process even if the evidence discloses a *prima facie* case. Under s. 203 Cr. P. C. even though a *prima facie* case is disclosed by the evidence there is discretion left in the hands of the M. who may for good reasons refuse to issue process. 36 C. W. N. 16: 1931 Cal. 107: 134 I. C. 1045: 54 C. L. J. 253.

S. 205.

—s. 205 is to be read and construed with reference to the preceding s. 204 and the heading of the Chapter XVII where both the ss. occur. It has also to be construed with reference to the next preceding four sections of Chapter XVI; and when so read it will be clear that it applies to all cases where a summons is issued in the first instance, to an accused, irrespective of the fact whether in answer to the summons or has to be brought in by a warrant of arrest issued subsequently. 1930 Nag. 61: 26 N. L. R. 50: I. R. 1940 Nag. 107: 121 I. C. 651: 31 Cr. L. J. 284: 1930 Cr. C. 149.

—sec. 205 should be freely utilised in such a country as Sind where so much prejudice exists against the appearance of females in public and where procedure of law is frequently abused in order to gratify private malice: 131 I. C. 137, 1931 Sind 37: 1931 Cr. C. 197: 32 Cr. L. J. 665, 3 S. L. R. 167 *Cr. Ref.*

S. 206.

—where the Sub-divisional M. rejected a complaint for offences under ss. 197 and 498 I. P. C. and the Dt. M. on being moved restored the complaint and added to the charge a new offence under s. 366 I. P. C. but the Sub-divisional M. committed

S. 206—*contd.*

the accused to Sessions under s. 366 I. P. C. refusing to commit under ss. 497 and 498, with the remark that the Session Judge might, if he thought fit, add a charge to that effect, held that the trying M. having in effect refused to carry out the order of the Superior Court its order was bad 53 C. L. J. 346: 32 Cr. L. J. 1135 1931 Cal 524: 134: 1 C 314: 1931 Cr. C. 676: I. R. 1931 Cal 810.

S 208.

—s 347 Cr. P. C. is controlled by s. 208. A. M. committing the accused to the Court of Sessions under the former sec. is bound to follow the provisions of Chapter XVIII of the Code. If before passing an order for commitment the accused applies for an opportunity to cross examine the prosecution witnesses and to examine his own witness and the M. declines, the accused may approach to the H. C. for an order to the M. to follow the provisions of Chapter XVIII, but in case the accused applies for such opportunity after an order for commitment is passed, it must be shown that he has effected notice in his own name of the M. taken in 1930 Cr. C. 94: 517:

—where cross-examination of the M. reserved, but ultimately the case was committed without affording the accused the promised opportunity, the commitment should be quashed. 57 C. 945: I. R. 1931 Cal. 98: 1930 Cal 754: 32 Cr. L. J. 182: 1930 Cr. C. 1154: 128 I. C. 802.

S. 209.

—a M. holding a preliminary inquiry has a discretion to weigh the evidence and discharge the accused if there are no sufficient grounds for committing him for trial. It is not the function of the M. to act merely as a machine for recording evidence and at the end automatically to commit the accused to session. 1931 M. W. N. 116, 1930 M. W. N. 683, 1922 M. W. N. 13, 1922 M. W. N. 326.

—in both s. 209 and s. 342 the examination of the accused is stated to be "for enabling him to explain any circumstances appearing in the evidence against him." It is not proper for the Court to examine the accused to entrap him into admissions filling the gaps in the prosecution case, but the answers given by the accused in answer to straightforward questions put by the Court may be taken into consideration under s. 342 (3) for committing the accused. 9 Pat. 504: 1930 Pat. 498: 11 Pat. L. T. 706: 1930 Cr. C. 926.

S. 210

—the accused has no right of cross-examination after the framing of a charge under this sec. 1931 Ali. 434: I. R. 1931 A 479: 132 I. C. 47: 1931 A. L. J. 587: 1931 Cr. C. 706: 32 Cr. 849.

S. 211.

—if after the framing of a charge triable by a Court of session the accused wishes to produce fresh witnesses whose names did not occur to him when he was asked for a list under sub-sec. (1), the M. has a discretion to summon such fresh witnesses. 1931 All. 434: I. R. 1931 All. 479: 132 I. C. 47: 1931 A. L. J. 587: 32 Cr. L. J. 849: 1931 Cr. C. 706.

S. 213

—a case under s. 326 I. P. C. cannot be committed to the Court of sessions because of its connection with a counter-case under s. 302 I. P. C. If the object is to avoid a possible conflict of decision it can be achieved by awaiting the result of the Sessions trial in the case under s. 302 I. P. C. 32 P. L. R. 856.

S. 215

—the absence of insufficiency of evidence does not constitute a point of law justifying the order for the quashing of a committal order, 1931 Lah. 467: I. R. 1931 Lah. 572: 132 I. C. 380: 32 Cr. L. J. 867: 32 P. L. R. 531: 1931 Cr. C. 691, *Contra*. 1930 Lah. 545: I. R. 1930 Lah. 596: 125 I. C. 214: 31 Cr. L. J. 814: 31. Punj. L. R. 348. 1930 Cr. C. 593, 5 C. W. N. 411, 9 C. W. N. 829, 6 A. 98, 38 A. 29.

S. 216.

—where the accused is tried for several offences such as under ss. 363 and 367
to adduce evidence
that the evidence
irrelevant or the
 vexation or delay or to defeat the ends of justice he can refuse to receive such evidence. 1930 Cal. 362: I. R. 1930 Cal. 763: 126 I. C. 720: 31 Cr. L. J. 1077: 1930 Cr. C. 538.

S. 221

—where owing to slip the word "or" was used for "and" between two charges framed under s. 221 and 342 I. P. C. and none of the accused was in any way prejudiced by the fact that in form the charge was in the alternative whereas in substance two quite distinct offences were charged, held that the conviction of the accused in respect of both the charges was not bad. 53 C. L. J. 54: 34 C. W. N. 1151: 1930 Cal. 708: I. R. 1931 Cal. 115: 129 I. C. 99: 32 Cr. L. J. 228: 1930 Cr. C. 1106.

S. 222.

—the object of s. 222 is to ensure that the accused may have as full particulars of the accusations made against him as possible. 34 C. W. N. 901: 1930 Cal. 717: 1930 Cr. C. 1117: 32 Cr. L. J. 321: 192 I. C. 359: I. R. 1931 Cal. 167.

—this sec. is confined to charges of criminal breach of trust or dishonest misappropriation of money and has plainly no application to the other charges. 12 Pat. L. T. 13: 1931 Pat. 102: 1921

S 222—*contd.*

Cr C. 230 : I. R. 1931 Pat. 204 : 130 I. C. 796 : 32 Cr. L. J. 611, (41 C 722, 1 A L. J. 599) *Ref.* It has nothing to do with the question of joinder of charges. 1931 Oudh 86 : 130 I. C. 350 : 32 Cr. L. J. 540 1931 Cr C 214 : I R 1931 Oudh. 158

—where in a prosecution under s. 409 I. P. C. only one charge was framed in which forms of money said to have been embezzled were specified and separate sentences were passed on some concurrently there was no misjoinder of charges. 52 A 941 : 1930 A. L. J. 1130 : I. R. 1931 All 67 : 128 I. C. 595 : 32 Cr. L. J. 155.

—where in a prosecution under s. 408 I. P. C. for breach of trust in respect of a gross sum of money misappropriated within the period of one year the charge not only specified the gross sum taken and the dates between which it was taken but also set out the items composing such gross sum giving the dates and the amounts alleged to have been misappropriated the charge comes within s. 222 cl. (2), and if by specifying the items composing the gross sum the charge went beyond what was necessary instead of prejudicially affecting the accused it is to that extent favourable to the accused, 34 C. W. N. 901 : 1930 Cal. 717 : 129 I. C. 359 : 32 Cr. L. J. 321 : 1930 Cr. C. 1117 : I. R. 1931 Cal. 167, 3 C. 928 *fol.*, (24 A. 254, 29 M. 558, 33 A. 36). *Ref.*

—where the charge is framed in respect of a gross sum of money received on specific dates the decision reported in 32 I. C.

misappropriation of a gross sum with an interval of time has already taken place, the prosecution cannot be heard to say that certain sums were left out from the gross sum of amounts 1930

854. 129 I. C.

32 L. W. 789.

—a trial in which of trust was alleged to have been committed between two specified dates does not bar a second trial in respect of an offence alleged to have been committed on intermediate days but not included in the gross sum. The charge of a gross sum embezzled between two dates is only one charge and there may be a separate trial under the provision of s. 233 of embezzlement of another item not included in the gross sum for which an earlier charge was framed under s. 222 (2). 53 A. 411 : 1931 All. 209 : I. R. 1931 All. 190 : 32 Cr. L. J. 376 : 1931 A. L. J. 93 : 129 I. C. 558 : 1931 Cr. C. 224, 1923 Cal 654, 5 I. C. 970 *Ref.* 32 I. C. 158 *not fol.*

S. 225

—when the disobedience to an order under the Police Act was described in the charge as an offence under s. 62-A (5) of the Calcutte Police Act and though it was also an offence under s. 183 I. P. C. but it was not so specified, held that the description given must be treated as complete and the provisions of ss. 235 and 537 Cr. P. C. apply. 58 C. 1303 : 35 C. W. N. 716.

S. 225—contd.

Cal. 410 : I. R. 1931 Cal. 558 : 132 I. C. 174 : 1931 Cr. C. 506 : 32 Cr. L. J. 844.

S. 226

—s. 226 does not provide the Session Judge with a power to add to the existing charges and charges under ss. 497 and 498 I. P. C. cannot be added by the Sessions Judge to a charge under s. 366 I. P. C. 53 Cr. L. J. 346 : 1931 Cal. 524 : I. R. 1931 Cal. 810 : 134 I. C. 314 : 32 Cr. L. J. 1135 : 1931 Cr. C. 676.

S. 227

—a court may alter a charge at any time before judgment is pronounced and the discretion conferred on the court by statute cannot be whittled away by ruling. 1931 Mad. 489 : 131 I. C. 461 : I. R. 1931 Mad. 525 : 1931 M. W. N. 339 : 32 Cr. L. J. 756 : 1931 Cr. C. 487 : 41 Cr. L. J. 446, *Rel on*.

S. 231

—this sec. applies to the alterations of a charge after the commencement of the trial. 1931 All. 434 : 1931 A. L. J. 587 : 132 I. C. 47 : 1931 Cr. C. 706 : 32 Cr. L. J. 849 : I. R. 1931 All. 479.

S. 233

—the breach of the provisions of sec. 233 is not merely an irregularity but it is an illegality which vitiates the whole trial. 1931 Oudh. 86 : 130 I. C. 350 : 32 Cr. L. J. 540 : 1931 Cr. C. 214, 25 M. 61 P. C. *Rel on*.

—there is no misjoinder in charging the accused with the main offence, namely, murder and under ss. 201 to 203 I. P. C. 54 M. 68 : 129 I. C. 230 : 32 Cr. L. J. 263 : 1930 M. W. N. 489 : 1930 Cr. C. 1126 : 1930 Mad. 870 : 59 M. L. J. 677.

—where the murder, attempted murder and hurt were independent transactions and the court framed a single charge but there was no failure of justice by reason of the joinder of charges, held that the omissions to frame separate charges was cured by s. 537 Cr. P. C. 53 M. 937 : 59 M. L. J. 945 : 1930 Mad. 857 : 1930 Cr. C. 1033 : 1930 M. W. N. 377 : 127 I. C. 654 : 32 Cr. L. J. 30 : I. R. 1930 Mad. 1038.

S. 234

—where a charge for an offence under s. 406 I. P. C. was made about fifteen months after the offence was committed, held that the charge was defective so as to vitiate the trial having violated the provisions of sec. 234 and it is not a mere irregularity. 34 C. W. N. 959 : 128 I. C. 816 : 32 Cr. L. J. 195 : I. R. 1931 Cal. 102.

—where a person is charged with falsification of accounts any number of false entries or omission of entries may be proved in order to prove the falsification and is not contrary to s. 234 Cr. P. C., 34 C. W. N. 925 : 32 Cr. L. J. 318 : 129 I. C. 356 : 1931 Cal. 8 : I. R. 1931 Cal. 164.

S 234—*contd*

—the trial of an accused person for four offences under s. 6 of the Arms Act committed within twelve months is illegal and cannot be cured by s 537 Cr. P. C. 1930 Mad. 508; 31 Cr. L. J. 1195; 127 I. C. 295 1930 Cr. C. 580 I. R. 1930 Mad. 983.

—it is lawful to charge a person under s. 408 I. P. C. with criminal breach of trust in respect of a lump sum of money made up of three different items and to link with that a series of charges of falsification under s. 477A, where each of the charges under s. 477A is united with one of the items of embezzlement comprised in the charge under s. 408 provided the charges of embezzlement under s. 408 are linked together into one sum and that linking together also affects the charges of falsification. 1931 Pat. 349 10 Pat. 463 1931 Cr. C. 797; 12 Pat. L. T. 696; 32 Cr. L. J. 1036, 41 C. 722 *Dist* 60 I. C. 422 *fol.* 40 C. 318 *Dist.*

S. 235

—joint trials unless clearly authorised by law do not save time in the long run and further the ends of justice and where the legality of the joinder of charges is doubtful, the correct course is to hold a trial clearly authorised by law. Where a revenue officer cheated the villagers on various occasions a joint trial of various acts of the accused cannot be sustained as cheating in each case was complete in itself. 1931 Pat. 102; 130 I. C. 796; I. R. 1931 Pat. 204; 12 Pat. L. T. 12; 32 Cr. L. J. 611; 1931 Cr. C. 230, 38A 42, 4 P. L. W. 105, 26 M. 125, 33 M. 102, 21 Bom. L. R. 732 *Ref*

—the expression "the same transaction suggests not necessarily proximity in time so much as continuity of action and purpose, 1931 Pat. 52; 1931 Cr. C. 148; I. R. 1931 Pat. 173; 130 I. C. 269; 32 Cr. L. J. 478, 30 Bom. 49 *fol.*

—fraudulent entry in a muster-roll and the subsequent misappropriation constitute different transactions. 1931 Leb. 86; I. R. 1931 Oudh. 158; 130 I. C. 350; 32 Cr. L. J. 540; 1931 Cr. C. 214.

oil and altered cocoanut
and you separate offences
Cr. L. J. 133 I. C. 418; 32

be supp but one should
All. 49 Cr. C. 121; 1931
A. L. J. 329 *Dist.* L. J. 1015, 1929

S. 236

—this sec. cannot be applied where the facts are doubtful but applies only where the facts being ascertained it is doubtful which of the two or more offences these facts constitute. If the facts

Innoc
1931
35 C

S. 236—contd.

33 Cr. L. J. 892 : 1931 Cr. C. 510 ; (41 C. 537, 43 I. C. 6.8, 54 I. C. 252) *Ref.*

—this sec. applies only to those rare cases where the prosecution cannot establish exclusively any one offence. 1931 Sind 116 : 134 I. C. 1004 : 25 S. L. R. 9 : 1931 Cr. C. 734, 5 S. L. R. 16 *fol.*

—charge for abetment but conviction for principal offence is not illegal. 1931 Mad. 325 : 32 Cr. L. J. 753 : 1931 Cr. C. 221 : I. R. 1931 Mad. 522 : 131 I. C. 458 : 1930 M. W. N. 1041, 33 M. 264 *not fol.*, 1925 M. W. N. 418 P. C. *Rel.*

—charge for principal offence but conviction for abetment when permissible. 1931 Oudh 274 : 132 I. C. 529 : 32 Cr. L. J. 905 : 1931 Cr. C. 634 : I. R. 1931 Oudh 289.

—where several persons were charged for offences under ss. 467 and 193 read with s. 34 I. P. C. and some of them were acquitted; the rest being convicted under ss. 467 and 193 I. P. C. only the conviction was held to be valid; held also that even if s. 34 I. P. C. should be treated as constituting a separate offence, the accused could still be convicted for the other offence alone. 58 C. 822 : 1931 Cal 625 : 1931 Cr. C. 809 : 133 I. C. 190 : I. R. 1931 Cal. 654 : 32 Cr. L. J. 1004.

S. 237

—s. 237 applies only to cases which fall within the provision of s. 236. Where the accused were charged under s. 395 I. P. C., but in charging the jury the court made reference to ss. 448 and 323 I. P. C. and the jury convicted the accused under s. 448 and 323 and not under s. 395, held that as there were charges under ss. 448 and 323 I. P. C. in the case; hence and there was I. 945 : 32 Cr.

—an accused who was charged with attempting murder under s. 307 I. P. C. may be convicted of the offence of criminal intimidation under s. 306 I. P. C., although he was not charged with it. 1931 M. W. N. 861.

S. 238

—where some of the persons sent up for trial under ss. 302 read with s. 149 I. P. C. are found not to be guilty of murder and are acquitted in respect of charge for those offences they can be convicted under s. 323 I. P. C. for having caused hurt in the same transaction to the companion of the deceased and omission of the charge under s. 323 would not render the conviction illegal. 1931 Lah. 565 : 1931 Cr. C. 854, 34 C. 325 and 34 C. 698 *Dist.*

S. 239

—in order to constitute the same transaction for the purpose of joinder of parties, the parties engaged in it must have similar or identical purpose in view, but this is not the only test or the correct test to apply to the case of a motor collision in consequence of

S. 239—contd.

which several persons were killed. In such cases the two drivers can properly be tried together. 1931 M. W. N. 556.

—number of acts for which there may have community of purpose or design and continuity of action may be regarded "the same transaction." 1931 Mad. 225; I. R. 1931 Mad. 522; 131 I. C. 458; 1931 Cr. C. 321; 1930 M. W. N. 1041; 32 Cr. L. J. 753.

S. 241

—there is no provision in the code for writing orders in the course of a case and it is advisable to defer all writing till the conclusion of the trial. 54 M. 595; 60 M. L. J. 495; I. R. 1931 Mad. 671; 132 I. C. 319; 32 Cr. L. J. 895; 1930 M. W. N. 1271; 1931 Cr. C. 467; 1931 Mad. 419.

S. 243

—under the sec. the court has got discretion to accept the plea of guilty and convict the accused or not to accept it. If the court does not accept the plea of guilty he must satisfy himself that the evidence justify conviction or he should record an order of acquittal. If he hear the evidence and it does not prove the facts of the charge it is not open to him to go back and accept the plea of guilty and convict the accused. If the court decides to accept the plea of guilty and convict he may call evidence to acquaint himself with the facts to enable him to arrive at a proper conclusion as to the sentence to be passed. But that is a different to see whether the
140; 1931 Bem. 195;
Cr. C. 339; 32 Cr. L. J.

719 F. B.

—where the accused's plea of guilty was not recorded in accordance with s. 243 and the accused also denied the plea, the conviction could not be upheld. 36 C. W. N. 132.

S. 244

"... h evidence as may be pro-
... has to record not only the
... cross-examination and re-
... vision is made for cross-
... But when express provisions for cross-examination

S. 245

—the acquittal of the accused under s. 245 without recording any evidence or examining the complainant or his witnesses, is illegal. 1931 M. W. N. 1050.

S. 250.

—s. 250 applies to all offences triable by a M. and not to cases triable by a Court of Sessions. 53A. 461; 1931 All. 35

S. 250—contd.

131 I. C. 36; I. R. 1931 All. 340; 1931 A. L. J. 89; 32 Cr. L. J. 670.
1931 Cr. C. 611. The question whether an offence is triable by a
Magistrate is not to be decided solely by the complaint. It cannot
be said that because a complaint mentions a section, a charge under
which is triable exclusively by a Court of Sessions he thereby
protects himself against a fine for bringing a false and frivolous
accusation. *Same case.*

—even in summary trials under Chapter XXII of the Code the requisites of his sec. must be satisfied and the record should contain the reasons for considering the complaint to be false and vexatious. 129 I. C. 37; 1930 M. W. N. 1047; 1930 Cr. C. 1141; 32 Cr. L. J. 207; 1930 Cr. C. 1141; 1930 Mad. 929; 59 M. L. J. 319.

—It is open to the Judge hearing an appeal under s. 250 (3) to go into all the facts of the case in order that he may determine whether the case is false or vexatious and he can set aside the order for compensation if it is based on wrong findings of fact.

S. 252.

—the accused has no absolute right of cross-examination before the framing of the charge but the M. would generally be exercising a proper discretion if they permit some cross-examination at least at that stage. 1931 All. 621 : 1931 Cr. C. 973, 8 C. W. N. 838, 21 C. 642. 5 Pat. L. J. 94 *Ref.*

S. 253.

—though the framing of a charge under minor section is tantamount to a discharge of the accused under the most serious section of the same type or family of offence, it is true only when the commission of the more serious offence is alleged from the start and the M. visualises or is invited to visualise the possibility of framing the more serious charge. 1931 Lah. 402; I. R. 1931 Lah. 814; 1931 Cr. C. 642; 133 I. C. 638; 32 Cr. L. J. 1029.

—a M. can discharge the accused at any stage before recording any evidence or in the course of recording evidences if he is of opinion that the charge is groundless. When the M. has held that the case is groundless and he is supported by the police report, he should not again ask the complainant to prove his case which has been disbelieved before the examination of the complainant and his witnesses. 1930 Cal. 515: 1. R. 1930 Cal. 745: 126 I. C. 553: 31 Cr. L. J. 1055: 1930 Cr. C. 859. 34 I. C. 305, 10 C. 67, 5 C. W. N. 106 Ref., 1928 Mad. 129 Dist.

S. 254.

I. P. C. the accused was charged for offences under ss. 353 and 186
tion unde
under s. 1
omission
cured in
Cr. L. J. 313 : 1930 A. L. J. 1314 : 1931 Cr. C. 7.

S. 256.

—persons taking no part in the proceedings of the court and allowing the judgment to be given against them without saying a word cannot properly take exception to the procedure of the court urging that the court omitted to do this or that unless they can produce very clear evidence that the court committed any such omissions. 1931 Oudh 73; 129 I. C. 166; I. R. 1931 Oudh 86; 32 Cr. L. J. 330; 1931 Cr. C. 129; 32 C. L. J. 330.

—"at the commencement of the next bearing" clearly indicate the intention to be given to the accused to examine any of the at the line of defence. 705; 1930 Cr. C. 831

—the Court is to give opportunity to the accused to recall prosecution witnesses. 1931 Lah. 186; 134 I. C. 580; I. R. 1931 Lah. 964; 32 Cr. L. J. 1202; 1931 Cr. C. 306; 32 P. L. R. 13.

S. 257.

—the M. must issue summons for the attendance of the witnesses for the defence unless he takes the responsibility of recording his ground for refusing the application for any of the reasons specified in this sec. 1931 Lah. 56; 32 Cr. L. J. 620; 1931 Cr. C. 120; 130 I. C. 816; 31 P. L. R. 949; 26B. 418 *fol.*

when the M. has once issued the process unless on subsequent scrutiny he has found that under s. 257 he ought to have refused process, he is obliged to take every step in his power to compel the attendance of the witness, subject to the provision of sub-sec. (2) of s. 257. 1931 Pat. 207; 130 I. C. 799; I. R. 1931 Pat. 207; 12 Pat. L. T. 372; 1931 Cr. C. 528; 32 Cr. L. J. 613.

S. 258.

—where a charge was framed against the accused and a date was fixed for the complainant to attend with his witnesses for cross-examination, the complainant and his witnesses failed to attend, on which the M. passed an order discharging the accused purporting to act under s. 259, held that there were two courses open to the court, firstly, to adjourn the case, or secondly, if there was no good ground for adjournment, to find the accused "not guilty" and to acquit him acting under s. 258 (1). 1930 All 795; 129 I. C. 262; I. R. 1931 All. 134; 1931 A. L. J. 3; 1930 Cr. C. 1017.

—the finding "not guilty" is a technical expression and not necessarily equivalent to a finding that the accused did not commit the acts charged. 1930 All. 795; I. R. 1931 All. 134; 129 I. C. 262; 1931 A. L. J. 3; 1930 Cr. C. 1017.

S. 259.

—where the complainant himself is adjudged responsible for the witnesses of the prosecution not being available for examination, he is himself responsible for rendering the test unsafe to rely upon and the M. should in such a case . . .

S. 259—contd.

case or acquit the accused under s. 258 (1) but cannot discharge the accused under s. 259 Cr. P. C. 1930 All. 795 : I. R. 1931 All. 134 : 129 I. C. 262 : 1931 A. L. J. 3 : 1930 Cr. C. 1017.

—criminal proceedings instituted by a private complainant do not abate on his death after a charge has been framed. 54 M. 768 : 61 M. L. J. 125 : 1931 Mad. 772 : I. R. 1931 Mad. 878 : 134 I. C. 990 : 1931 Cr. C. 1028 : 1931 M. W. N. 767, 46 M. 88 Diss. (30 I. C. 1001, 6 Rang. 664) fol.

S. 260.

—the jurisdiction of the Court to try summarily in a case prosecuted by the police is derived from the police. The M. can summarily dispose of a case of theft or articles of the value of less than rupees fifty. 53 A. 218 : 1931 All. 51 : 130 I. C. 484 : 32 Cr. L. J. 556 : 1930 A. L. J. 1490 : 1931 Cr. C. 123 : I. R. 1931 All. 276.

—where an offence as disclosed was not summarily triable and the Court adopted the summons procedure the H. C. can set aside the conviction and remand the case for trial. 34 C. W. N. 556 : 1930 Cr. C. 1111 : 1930 Cal. 711 : 128 I. C. 208.

—an offence under s. 211 I. P. C. cannot be tried summarily. *above case.*

S. 271.

—after a plea of guilty there is nothing in issue to be tried, between the Crown and the prisoner at the bar, *a fortiori* after his plea of guilty has been accepted and the reason is still strayed, if he has been convicted after upon the plea of guilty. When a person has pleaded guilty, he *ipso facto* ceases to be an accused person. 58 C. 1214 : 1931 Cal. 341 : 35 C. W. N. 490 : 1931 Cr. C. 405 : 31 Cr. L. J. 667, 9 C. L. J. 72 Ref.

—the trial does not proceed because s. 272 does not apply where accused pleads guilty. Sec. 271 means that where the accused pleads guilty the court need not necessarily record a conviction against him, his plea shall be recorded and in a suitable case the Court may leave the matter there and discharge him. He cannot be tried. *above case.*

—the practice sometimes adopted in India, where there is a joint trial of refusing to accept the plea of guilty and proceeding to try the accused in order that his confession may be taken into consideration against his co-accused under s. 30 Evi. Act. is illegal and an abuse of the process of the Court. *above case.*

S. 272.

—where there are two cross-cases if there is no objection by the parties to the jury, the second case may be tried by the same jury after the termination of the first case, but both the cases cannot be tried by the same jury at the same time. 54 C. L. J. 146 : 134 I. C. 896 : 1931 Cal. 896 : 32 Cr. L. J. 1233 : 1931 Cr. C. 989 : 1931 Cal. 709.

S. 274.

—where the trial of one of the accused is vitiated on account of non-compliance with s. 274 the conviction of the other persons who were tried joint should also be set aside. 58 C. 1272: 35 C. W. N. 711: 54 C. L. J. 307: 1931 Cal. 793: 1931 Cr. C. 1057.

—where the case required a jury of nine but the judge believed seven to be the required number and the trial was held on that basis, it was vitiated and could not be cured by s. 537 Cr. P. C. 34 C. W. N. 735: 1930 Cal. 710: 1930 Cr. C. 1116: 51 C. L. J. 578

—in a murder case where the number of jurors summoned is 14, nine of whom appear and are chosen by lot, the trial is not bad by reason of the fact that only 14 jurors have been summoned in contravention of the provisions of ss. 274 and 326 Cr. P. C. 57 C. 1228: 34 C. W. N. 296: 51 C. L. J. 171: 123 L. C. 664: 31 Cr. L. J. 536: 1930 Cr. C. 212: 1930 Cal. 212 F. B. 33 C. W. N. 1054 *overruled*. 1930 Cal. 60 and 33 C. W. N. 1053 *impliedly overruled*. 55 M. L. J. 585 P. C. App. 25 M. 61 P. C. Dist.

S. 276

—an argument based on the collocation of the provisos cannot be of use in construing the provisions. All the provisos are provisos to the main section. In proper cases all the provisos must be considered. It cannot be said that because a special 276 would not apply. The term meaning both special W. N. 711: 54 C. L. J. 307:

S. 288.

—previous statements of witnesses are only ordinarily admissible if made at the trial. The witnesses who have made 288 Cr. P. C. The is reason to believe departing from the here it is considered sole statement made e 1930 All. 746: L. 1930 A. L. J. 1105.

—the discretion to let in the evidence given in the preliminary inquiry is one that must be carefully exercised. The section should not be resorted to by the Judge for using a statement of a witness made before the committing court, when that witness had not given any such evidence before the Sessions and his depositions had not been put in or referred to during the trial. 57 C. 940: 1930 Cal. 706: 32 Cr. L. J. 180: 128 L. C. 801: 1930 Cr. C. 1106.

—when the confession made by an accused person before the committing M. has been retracted at the Sessions Court, the court will consider whether it is corroborative in material particular and whether the statement as a whole is truthful

S. 288—contd.

and may in either of these cases give full weight to it. The evidence of an approver stands on the same footing as that of any other witness in this respect. 9 Pat. 592 : 1930 Pat. 545 : 128 I. C. 114 : I. R. 1931 Pat. 2 : 1930 Cr. C. 1089 : 32 Cr. L. J. 66 : 11 Pat. L. T. 787, 3 Pat. 781, 8 Pat. 262, 8 Pat. 235 Ref.

S 292

—an erroneous decision as to the right of reply cannot be treated as such an irregularity or such a substantial irregularity as to vitiate the whole proceedings and to call for a retrial even from the stage at which the error arose. 1931 Lah. 534 : I. R. 1931 Lah. 660 : 132 I. C. 692 : 1931 Cr. C. 774 : 32 P. L. R. 435 : 32 Cr. L. J. 944.

—the right of reply depends under the present law on the accused adducing oral evidence in defence after the close of the prosecution case and the mere fact of their having proved certain document through a prosecution witness in cross-examination would not deprive them of their right of reply. 1931 Lah. 534 : 32 P. L. R. 435 : I. R. 1931 Lah. 660 : 132 I. C. 692 : 1931 Cr. C. 774 : 32 Cr. L. J. 944, 43 C. 426 Ref.

S, 297

—where the charge to the jury contained no caution as regards the weight and the efficacy to be given to a dying declaration, the verdict of the jury and sentence must be set aside. I. R. 1931 Cal. 172 : 1930 Cal. 754 : 129 I. C. 364 : 34 C. W. N. 792 : 1930 Cr. C. 1154 : 1930 Cal. 754.

—where the Judge instead of grouping the witness in such a way as direct the attention of the jury to the evidence regarding each of the particular facts sought to be proved on either side, merely placed their deposition before the jury in the order in which they were examined, held that the method adopted of the jury in some respects Judge by summing up the used. 35 C. W. N. 390 : 32 793 : 127 I. C. 767.

—in a lengthy charge pause at every step to assure matters for them. Repetition 34 C. W. N. 1154 : I. R. 1931 190 : 1931 Cr. C. 242 : 1931 Cal. 1154 : I. C.

—the Judge can re-charge jury after unintelligible verdict and cross-examination of the jury which means cross-examination of the foreman in such case is improper. 57 C. 61 : 1930 Cal. 320 : 1930 Cr. C. 401 : I. R. 1930 Cal. 481 : 125 I. C. 92 : 31 Cr. L. J. 761.

—the failure to put to the jury matters which ought to have been placed before them for their consideration amounts to a misdirection. 34 C. W. N. 954 : 128 I. C. 807 : 1931 Cr. C. 42 : 1931 Cal. 10 : I. R. 1931 Cal. 103 : 32 Cr. L. J. 116.

S. 297—*contd*

—it is desirable that the record of heads of charges should indicate far more fully than mere enumeration of the numbers of sections. But the H. C. will not interfere unless there is misdirection. 1930 Cal. 712; 32 Cr. L. J. 236; 1930 Cr. C. 1112; 1. R. 1931 Cal. 125; 129 1 C. 109.

—it is the Judge's duty to hold the balance even between the prosecution and the defence and to put before the jury the weak as well as the strong points in the prosecution case. 1929 M. W. N. 946.

—where in a prosecution for murder the defence counsel set up a plea of private defence not only on the basis of the statement of the accused but on the basis of the prosecution evidence but the Judge did not put that plea before the jury on the ground that it was not raised by the accused, held that the plea of private defence ought to have been gone into and the trial was vitiated for misdirection to jury. 51 C. L. J. 339; 127 1. C. 263; 1. R. 1930 Cal. 839; 31 Cr. L. J. 1203; 1930 Cr. C. 750; 1930 Cal. 442.

—it is misdirection if the Judge does not tell the jury that from the failure of the prosecution to examine an important witness it should be presumed that if the witness had been examined
 case for the prosecution.
 481; 32 Cr. L. J. 33;
 J. 244; 134 1. C. 1191;
 he explains the whole

—the Judge is bound to draw the attention of the jury to the nature of the corroboration that the approver's evidence has from the other evidence in the case. 34 C. W. N. 390; 127 1. C. 767; 32 Cr. L. J. 33; 1. R. 1930 Cal. 895; 1930 Cr. C. 793; 1930 Cal. 481.

—where in a case where possession was in dispute the Judge omitted to refer the jury to the presumption arising from the entry in the record of rights but it appeared that the record was 12 years old and the entries therein were practically of no value there was no misdirection. 34 C. W. N. 170; 125 1. C. 746; 1930 Cr. C. 134; 1. R. 1930 Cal. 618; 31 Cr. L. J. 918; 1930 Cal. 134.

—a misdirection regarding one of the charges may have a bearing on the other charge as well, because the jury might consider on the basis of a proper direction that the entire prosecution story was unworthy of credit. 53 C. L. J. 54; 1930 Cr. C. 1108; 32 Cr. L. J. 228; 1. R. 1931 Cal. 115; 129 1. C. 99; 34 C. W. N. 1151; 1930 Cal. 708.

—where the jury were given the proper questions to answer but were told to answer the same in the wrong order, and, further, they were told that two questions which were in fact separate, were intimately connected, held there was a misdirection vitiating the trial. 1930 M. W. N. 773.

S. 297—*contd.*

—in cases for dacoity when some are acquitted being the number of the guilty below five, the jury must be told that they must have due regard to the fact that they have acquitted a certain number of persons reducing the number to below five and that they must be satisfied before convicting any number short of five that they were acting conjointly with persons not charged in the case. 54 M. 588 : 1931 Mad. 427 : I. R. 1931 Mad. 849 : 134 I. R. 801 : 32 Cr. L. J. 1212 : 1931 M. W. N. 652 : 1931 Cr. C. 475 : 33 L. W. 414, 1930 M. W. N. 1142 : 133 I. C. 7 : I. R. 1930 Mad. 695 : 32 Cr. L. J. 973 : 1931 Cr. C. 545 : 1931 Mad. 481 : 60 M. L. J. 691.

—where in the case of a fracture of the bone due to falls blows the Judge explained to the jury the circumstance which would bring the case under s. 325 I. P. C. and also explained the ingredients of the offence under s. 34 I. P. C. held that there was non-direction or misdirection which vitiated the trial, 52 C. L. J. 425 : 129 I. C. 676 32 Cr. L. J. 416.

—there would be misdirection if in a case of robbery the Judge leave it often to the jury that they were entitled to convict the accused of robbery if merely in the course of committing theft some violence or wrongful restraint was caused to others. See also 1339 C. 7 : I. R. 1931 : 1931 Mad. 481 : 60 : N. 72 Ref. See also 54 M. 588 : 1931 M. W. N. 652 : 134 I. C. 801 : 32 Cr. L. J. 1212 : 1931 Mad. 427.

—where the accused gave poison to a girl to be administered to her husband with the object of gaining his love and the girl mixed the powder in cooked food and served it to her husband, father-in-law and brother-in-law in consequence of which her father-in-law and brother-in-law died, held that the Judge should have left as a question of fact to the jury to decide whether the giving of the poison to the deceased was a probable consequence of the act of the accused, held further that though the conviction of the accused under ss. 302 and 109 I. P. C. could not be sustained a conviction under ss. 302 and 115 I. P. C. would be substituted. 35 C. W. N. 573 : 1931 Cal. 757 : 1931 Cr. C. 1031 : I. R. 1931 Cal. 896 58 C. 1228.

—where the accused was charged under s. 395 I. P. C. but the Judge referred the jury to ss. 449 and 323 I. P. C. in the absence of any charge under these sections, there was misdirection. 35 C. W. N. 945 : 132 I. C. 254 : I. R. 1931 Cal. 574 : 32 Cr. L. J. 892 : 1931 Cr. C. 510 : 1931 Cal. 414.

—where the alleged statements of the prosecution witnesses before the police were not properly put in evidence under s. 162 Cr. P. C. and were not even proved as substantive evidence and yet the Judge made use of them in order to discredit the witness

S 297—contd.

to so far as he did not support the prosecution cases, the procedure adopted amounted to misdirection, vitiating the trial. 58 C. 1009: 35 C. W. N. 317: I. R. 1931 Cal. 543: 132 I. C. 159: 32 Cr. L. J. 841: 1931 Cr. C. 253, 42 C. L. J. 528 *Rel on*

—where in a case under s. 304 I. P. C. the section was not properly explained a retrial was ordered. 58 C. 1138: 35 C. W. N. 456: I. R. 1931 Cal. 404 1931 Cr. C. 409: 130 I. C. 884: 1931 Cal. 345.

—where in a case of arsenic poisoning the Judge impracticably asserted that poisoning was the cause of death and omitted to place before the jury that fact that the chemical examiner's report and the medical evidence were not conclusive as to the proof of guilt and also omitted to draw their attention to the fact that the prosecution had not made out wherefrom the poison had been obtained, there was misdirection 35 C. W. N. 169: 129 I. C. 677: 32 Cr. L. J. 418: 1931 Cal. 11: 52 C. L. J. 417.

—In a prosecution for an offence under s. 373 I. P. C. the Judge told the jury that they might appeal to their own experience in that experience to the impression that they had formed : omitted to say that guide, held there was W. N. 316.

. which might have been
. he same point to the
. e, such omission could
. vitiates the trial. 1930
Cal. 533: 134 I. C. 71: I. R. 1931 Cal. 473: 32 Cr. L. J. 1101: 1931 Cr. C. 685. Sp. B.

—where the Judge said that the accused person was guilty of the offence of criminal breach of trust upon the basis that he became an executor *de son tort* and he also omitted to explain properly the essentials of the offence of secretion of a document under ss. 477 I. P. C. there was misdirection and non-direction vitiating the trial, 58 C. 1031: 35 C. W. N. 435: I. R. 1931 Cal. 529: 132 I. C. 145: 32 Cr. L. R. 836: 1931 Cr. C. 248: 1931 Cal. 184: Sp. B.

—the fact that the witness is dealt with under s. 154 Evi. Act even when under that sec. he is cross-examined to credit, in no way are bound to law to place
. y who called and cross-
. any part of his evidence.

How direction should
. urds the prior statement
of a witness has been dealt with in the case 35 C. W. N. 731: 53 C. L. J. 427: I. R. 1931 Cal. 463: 131 I. C. 575: 1931 Cr. C. 497: 1931 Cal. 401: F. B.

—a jury cannot be required to make the presumption . . .
an accused person that the particular statements of a . . .
witness are true. It is a serious error to tell a jury in any

S. 297—*contd.*

of words, that the law in a criminal case requires them *prima facie* to accept the particular statements of a witness and that it is only when the defence have shown good reasons to reject his statements that the jury have any option in the matter. 58 C. 1095 : 1931 Cal. 796 : 7931 Cr. C. 1060.

S. 298.

—the jury first returned a confused verdict but when the Judge directed them afresh they returned another verdict, held that the conviction based on the second verdict need not be set aside. 58 C. 1335.

—it is the duty of the Judge to analyse, to sift and to weigh the evidence to marshal the facts properly to discover and arrange in some sort of order before the facts which are *material* and upon which the Jury are to concentrate their attention. 35 C. W. N. 404.

—where the charge to the Jury was little more than a long rambling statement of the evidence as it came from the mouths of several witnesses and no attempt was made to sift the relevant and important facts from the irrelevant and unimportant facts, the charge was defective and vitiated the trial. 35 C. W. N. 835 : 134 I. C. 317 : 53 C. L. J. 351 : 32 Cr. L. J. 1138 : I. R. 1931 Cal 813.

—it is no part of a Judge's duty to accept and interpret for himself a verdict of an unintelligible character when the members of the Jury are there and give a proper verdict. 57 C. 61 : 125 I. C. 97 : 1930 Cr. C. 401 : 31 Cr. L. J. 761 : 1930 Cal. 320.

—reference in the charge to the Jury to the statement of witnesses given before the committing M. when they were not examined in the Sessions Court is improper. 57 C. 940 : 1930 Cal. 706 : 128 I. C. 801 : 32 Cr. L. J. 180 : 1930 Cr. C. 1106.

—the Judge should explain to the Jury the situation arising in a case of hostile witness. He should tell the jury to reject the evidence of such evidence altogether and his omission to do so amounts to misdirection. 57 C. 1266 : 34 C. W. N. 526 : 1930 Cal. 276 : 31 Cr. L. J. 1207 : 51 C. L. J. 203 : 1923 Cal 463 *Ref.*

S. 299.

—the Judge should explain to the Jury that if a juror thinks that a witness has been convicted on another. 427 : 35 C. .. 497 F. B.

S. 300.

—when the Jury retire to consider their verdict all jurors must be in the retiring room together during the whole time when their verdict is taken by the Presiding Judge. 1930 Cal. 446 : 126 I. C. 753 : I. R. 1930 Cal. 769 : 31 Cr. L. J. 1090 : 1930 Cr. C. 707.

S. 303.

—the Judge has no power to put question to the Jury after their verdict except those contained in s. 303. The Judge is not entitled to question the Jury about the reasons why they have found a particular verdict. 34 C. W. N. 831: 127 I. C. 79: 1930 Cal. 448: 31 Cr. L. J. 1150: 1930 Cr. C. 751, 35 C. W. N. 407: 1931 Cal. 636, 134 I. C. 1133: 1931 Cr. C. 836 Only where the verdict is ambiguous or defective and it becomes necessary to ascertain what the verdict is the Judge can question the Jury under s. 303. 61 M. L. J. 915: 1931 Mad. 775: 1931 M. W. N. 857: 32 Cr. L. J. 1276: 1931 Cr. C. 1031: 134 I. C. 956.

—ss. 303 and 304 imply that the Jury are cognizable of the record made by the Judge of the questions put to them.

—where in a trial of an offence under s. 408 I. P. C. with regard to a gross sum the Judge instead of inviting the verdict of the Jury in respect of a charge under s. 408 I. P. C. asked them to give their verdict in respect of the charge laid against the accused on several items and the Jury returned a verdict of guilty as regards some of the items only and the Judge convicted the accused under s. 408 I. P. C., held that the defect was one of form only. 34 C. W. N. 901: 129 I. C. 359: 32 Cr. L. J. 321: 1930 Cr. C. 1117: 1930 Cal. 717.

S. 304.

—having regard to the express provision of law and the rule of public policy on which that provision is based, generally speaking, after the verdict has been recorded by the Judge and the Jury has left the box it would be improper for the Judge to listen to any application to amend the verdict. 58 C. 1138: 35 C. W. N. 456: 130 I. C. 884: 1 R. 1931 Cal. 404: 1931 Cr. C. 409: 1931 Cal. 345: 32 Cr. L. J. 598.

S. 307.

—s. 307 was passed doubtless to provide a safeguard in jury trials because the legislature was not satisfied that a Jury could always be relied upon to do their duty. 35 C. W. N. 1212: 1931 Cal. 601: 1931 Cr. C. 753: 134 I. C. 1053.

—under this sec. the H. C. has a wide discretion to accept or reject the verdict of the jury and to decide the case on the evidence. 1931 A. L. J. 695: 32 Cr. L. J. 1078: 1 R. 1931 All. 683: 133 C. 475. But its power is strictly limited. 1930 Cal. 437: 51 C. L. J. 352: 129 I. C. 831: 1930 Cr. C. 748.

—a letter of reference should ordinarily state the case and the verdict of the Jury and concisely the ground upon which Judge differs from that verdict. The H. C. is generally not to interfere with the unanimous verdict of the Jury.

S. 307—contd.

manifestly wrong and unless it is necessary to do so in the interest of justice. 57 C. 1183 : 129 I. C. 798 : 1931 Cr. C. 47 : 1931 Cal. 15.

—the fact that the S. J. might and does take a different view of the evidence from that of the Jury is no ground for a reference under this sec. 1930 Pat. 208 : 11 Pat. L. T. 605 : 120 I. C. 290 : 31 Cr. L. J. 54.

S. 319.

—a prolonged absence of an assessor from the District exempts him from being an assessor under s. 319. 1931 Pat. 160 : 12 Pat. L. T. 209 : 32 Cr. L. J. 740 : 1931 Cr. C. 400 : 131 I. C. 540 : I. R. 1931 Pat. 220, 3 Bom. 227, 6 Bom. 100 *Rel. on.*

S. 326.

It is neither illegal nor irregular for Sessions Judge to summon less than eighteen persons for a trial of murder case so long as he takes care to summon a sufficient number of persons to enable him to choose the requisite number of jurors from among them. Any irregularity would be generally condoned under s. 537. 1931 Pat. 152. 131 I. C. 801 : 10 Pat. 107 : I. R. 1931 Pat. 241 : 1931 Cr. C. 392, 52 C. 1228 F. B. *fol.*

S. 337

—failure to comply with the provisions of sec. 337 (2) is an illegality and not a mere irregularity on procedure and makes the trial bad. 11 Lah. 230 : 1930 Lah. 95 : 1930 Cr. C. 111 : 120 I. C. 489 : 31 P. L. R. 496 : 31 Cr. L. J. 111.

—an approver cannot be detained in the custody of the Police. 1931 Lah. 430 : 32 P. L. R. 728 : 1931 Cr. C. 704, 1931 Lah. 476 *Rel. on.* 1931 Lah. 353 : 12 Lah. 604 : I. R. 1931 Lah. 481 : 131 I. C. 625 : 1931 Cr. C. 625.

—as soon as a pardon is granted to an approver with a view to obtaining his evidence, he becomes a witness *quæ* the case and continues to assume that role up to the time when his failure to comply with the condition causes a forfeiture of the pardon. He cannot be detained in police custody. 1931 Lah. 476 : 12 Lah. 635 : I. R. 1931 Lah. 615 : 32 Cr. L. J. 913 : 32 P. L. R. 493 : 132 I. C. 519 : 1931 Cr. C. 700.

—this sec. makes it imperative for the prosecution to produce a pardon who accepted a tender of pardon but whose tender of pardon has been withdrawn before the trial in the Sessions Court takes place. 1931 Lah. 102 : I. R. 1931 Lah. 897 : 33 Cr. L. J. 1126 : 134 I. C. 193 : 31 Punj. L. R. 1014 : 1931 Cr. C. 166, 11 Lah. 230. *Rel. to.*

S. 339.

—when a conditional pardon has been tendered and accepted there must be good faith on both sides. It is for the Crown to prove that the pardon has been forfeited. Mere discrepancy between the confession and the evidence after five months does not discharge the pardon. 1930 M. W. N. 273.

S. 342

—for the purpose of s. 342 an oath should be administered to the accused 35 C. W. N. 490: 53 C. 1214: 1931 Cr. C. 405: 1931 Cal. 341 32 Cr. L. J. 667

—this sec. contemplates an individual examination of all the accused and a joint statement taken from all the various accused persons is not compliance with the requirements of the sec. It is an illegality which vitiates the trial. 55 B. 356: 1931 Bom. 132: 130 I. C. 577 33 Bom. L. R. 82: 1931 Cr. C. 180: 32 Cr. L. J. 572.

—this sec. is restricted to an accused who is on trial in the proceeding to which the sec. is applied. It does not apply to a person who may be accused in some other proceeding or to a convicted person. A person who has been convicted can give evidence in the proceeding. 35 C. W. N. 490: 58 C. 1214: 131 Cr. C. 142 1931 Cr. C. 405. 1931 Cal. 341 32 Cr. L. J. 667, 45 C. 720, 10 B. 390, 23 B. 213 *Ref.*

—the provisions of this sec. are mandatory and should be strictly complied with 1931 Mad. 241: 131 I. C. 493: 1930 M. W. N. 914: 1931 Cr. C. 361 32 Cr. L. J. 757, 44 M. L. J. 567, F.B. *Rel. on*, 130 I. C. 845: 32 Cr. L. J. 623

—this sec. does not apply to trial of summons cases 9 Rang. 506: 1931 Rang. 244: 131 I. C. 500: 32 Cr. L. J. 1190: 1931 Cr. C. 884 F.B., 46 M. 758, *fol* 45 B. 672, 49 C. 1075 *Ref.*

—the court may draw such inference from the accused's refusal to answer questions as it thinks just according to sec. 342 Cr. P. C. and a 114 *Illus. (h) Evl. Act.* 1931 Lab. 178: 1931 Cr. C. 298: 131 I. C. 277: I. R. 1931 Lab. 405: 32 Cr. L. J. 684.

—the omission to examine the accused again under s. 342 is not a circumstance which in itself vitiates the trial. Provided the accused is examined after the evidence for the prosecution is completely closed to enable him to explain the circumstance appearing in evidence against him it makes no difference whether the examination takes place before or after the framing of the charge 32 Bom. L. R. 596: I. R. 1930 Bom. 314: 124 I. C. 810: 31 Cr. L. J. 743 1930 Cr. C. 693: 1930 Bom. 241.

the statement of an accused person under s. 342 Cr. P. C. by which he implicates his co-accused is not admissible in evidence against the co-accused under this sec. But such statement is admissible under s. 30 *Evl. Act.*, though its value depends upon the circumstance of each case. 54 Bom. 531: 1930 Bom. 354: I. R. 1930 Bom. 439: 127 I. C. 105: 31 Cr. L. J. 1137: 32 Bom. L. R. 747.

S. 347.

—a M. has power at any stage of the proceedings to decide that the case is one which he ought not to try and which ought to be referred to the Sessions Judge. He should ordinarily commit the case to the Sessions Judge when completed. 1930 Cal. 666: 131 I. C. 243: 1930 Cr. C. 1058. The Sessions Judge has discretion to decide whether the accused should be tried in his own Court or in the alternations given in

S. 307—*contd.*

manifestly wrong and unless it is necessary to do so in the interest of justice. 57 C. 1183 : 129 I. C. 798 : 1931 Cr. C. 47 : 1931 Cal. 15.

—the fact that the S. J. might and does take a different view of the evidence from that of the Jury is no ground for a reference under this sec. 1930 Pat. 208 : 11 Pat. L. T. 605 : 120 I. C. 290 : 31 Cr. L. J. 54.

S. 319.

—a prolonged absence of an assessor from the District exempts him from being an assessor under s. 319. 1931 Pat. 160 : 12 Pat. L. T. 209 : 32 Cr. L. J. 740 : 1931 Cr. C. 400 : 131 I. C. 540 : I. R. 1931 Pat. 220, 3 Bom. 227, 6 Bom. 100 *Rel. on*.

S. 326.

It is neither illegal nor irregular for Sessions Judge to summon less than eighteen persons for a trial of murder case so long as he takes care to summon a sufficient number of persons to enable him to choose the requisite number of jurors from among them. Any irregularity would be generally condoned under s. 537. 1931 Pat. 152 : 131 I. C. 801 : 10 Pat. 107 : I. R. 1931 Pat. 241 : 1931 Cr. C. 392, 52 C. 1228 F. B. *fol.*

S. 337

—failure to comply with the provisions of sec. 337 (2) is an illegality and not a mere irregularity on procedure and makes the trial bad. 11 Lah. 230 : 1930 Lah. 95 : 1930 Cr. C. 111 : 120 I. C. 489 : 31 P. L. R. 496 : 31 Cr. L. J. 111.

—an approver cannot be detained in the custody of the Police. 1931 Lah. 480 : 32 P. L. R. 728 : 1931 Cr. C. 704, 1931 Lah. 476 *Rel. on* 1931 Lah. 353 : 12 Lah. 604 : I. R. 1931 Lah. 481 : 131 I. C. 625 : 1931 Cr. C. 625.

—as soon as a pardon is granted to an approver with a view to obtaining his evidence, he becomes a witness *quod* the case and continues to assume that role up to the time when his failure to comply with the condition causes a forfeiture of the pardon. He cannot be detained in police custody. 1931 Lah. 476 : 12 Lah. 635 : I. R. 1931 Lah. 615 : 32 Cr. L. J. 913 : 32 P. L. R. 493 : 132 I. C. 519 : 1931 Cr. C. 700.

—this sec. makes it imperative for the prosecution to produce a pardon who accepted a tender of pardon but whose tender of pardon has been withdrawn before the trial in the Sessions Court takes place. 1931 Lah. 102 : I. R. 1931 Lah. 897 : 33 Cr. L. J. 1126 : 134 I. C. 193 : 31 Panj. L. R. 1016 : 1931 Cr. C. 166, 11 Lah. 230 *Rel. to.*

S. 339.

—when a conditional pardon has been tendered and accepted there must be good faith on both sides. It is for the Crown to prove that the pardon has been forfeited. Mere discrepancy between the confession and the evidence after five months does not discharge the pardon. 1930 M. W. N. 773.

S 342.

—for the purpose of s. 342 no oath should be administered to the accused 35 C. W. N. 490: 53 C. 1214: 1931 Cr. C. 405: 1931 Cal. 341 32 Cr. L. J. 667

—this sec. contemplates an individual examination of all the accused and a joint statement taken from all the various accused persons is not compliance with the requirements of the sec. It is an illegality which vitiates the trial. 55 B 356: 1931 Bom. 132: 130 I. C 577: 33 Bom. L. R. 82: 1931 Cr. C. 180: 32 Cr. L. J. 572.

—this sec. is restricted to an accused who is on trial in the proceeding to which the sec. is applied. It does not apply to a person who may be accused in some other proceeding or to a convicted person. A person who has been convicted can give evidence in the proceeding. 35 C. W. N. 490: 58 C. 1214: 131 Cr. C. 142: 1931 Cr. C. 405: 1931 Cal. 341: 32 Cr. L. J. 667, 45 C. 720, 10 B 390, 23 B 213 *Ref.*

—the provisions of this sec. are mandatory and should be strictly complied with 1931 Mad. 241: 131 I. C. 493: 1930 M. W. N. 914: 1931 Cr. C. 361: 32 Cr. L. J. 757, 44 M. L. J. 567, F.B. *Rel. on.*, 130 I. C. 845: 32 Cr. L. J. 623.

—this sec. does not apply to trial of summons cases. 9 Rang. 506 1931 Rang. 214: 134 I. C. 500: 32 Cr. L. J. 1190: 1931 Cr. C. 884 F.B., 46 M. 758, *fol.* 45 B 672, 49 C. 1075 *Ref.*

—the court may draw such inference from the accused's refusal to answer questions as it thinks just according to sec. 342 Cr. P. C. and s. 114 *Illus. (h)* Evi. Act. 1931 Lah. 178: 1931 Cr. C. 298: 131 I. C. 277: I. R. 1931 Lah. 405: 32 Cr. L. J. 684.

—the omission to examine the accused again under s. 342 is not a circumstance which in itself vitiates the trial. Provided the accused is examined after the evidence for the prosecution is completely closed to enable him to explain the circumstance appearing in evidence against him it makes no difference whether the examination takes place before or after the framing of the charge. 32 Bom. L. R. 596: I. R. 1930 Bom. 314: 124 I. C. 810: 31 Cr. L. J. 743 1930 Cr. C. 693: 1930 Bom. 241.

the statement of an accused person under s. 342 Cr. P. C. by which he implicates his co-accused is not admissible in evidence against the co-accused under this sec. But such statement is admissible under s. 30 Evi. Act, though its value depends upon the circumstance of each case. 54 Bom. 531: 1930 Bom. 354: I. R. 1930 Bom. 439: 127 I. C. 105: 31 Cr. L. J. 1137: 32 Bom. L. R. 747.

S. 347.

—a M. has power at any stage of the proceedings to decide that the case is one which he ought not to try and which ought to be tried in his own Court or he should ordinarily commit the case to the Court of Session when completed. 1930 Cal. 666: L. J. 243: 1930 Cr. C. 1058. discretion to decide whether the case should be tried in his own Court or the alternations given

S. 347—contd.

the Schedule, but the discretion is subject to review by the H. C. though only on definite grounds. The mere fact that the accused prefers a trial by jury at Sessions Court to avoid an unconscious bid in favour of the Govt. or the part of the M., is no ground for interfering with the discretion of the M. who decided to try the case himself, when the Legislature has not seen fit to provide that in every case the trial at Sessions will enable the accused to have a jury. 33 Bom. L. R. 1515, 53 B. 611 *Ref.*

S. 350.

—where proceedings are in the nature not of a trial but merely of an inquiry preparatory to commitment, the necessity of any provision for *de novo* trial does not exist. 1930 Cal. 666 : I. R. 1931 Cal. 134 : 129 I. C. 182 : 32 Cr. L. J. 243 : 1930 Cr. C. 1054.

S. 362.

—s. 362 is not confined to criminal offences ; it applies to an application under s. 488 and so notwithstanding the words in s. 355, under ss. 362 (4) and 488 read together, it is incumbent on Presidency M. to record evidence in the manner laid down in s. 355. 1931 Bom. 142 : 129 I. C. 339 : I. R. 1931 Bom. 147 : 32 Cr. L. J. 276 : 1931 Cr. C. 190.

S. 366.

—where after the hearing of a criminal appeal the Judge was	rewarded
transferred	passed
the same	J. W. N.
without	
838 : 1931	

S. 367.

—it is desirable that the record of heads of charges should indicate far more fully than mere enumeration of the numbers of the sections. 1930 Cal. 712 : 1930 Cr. C. 1112 : I. R. 1931 Cal. 125 : 129 I. C. 109 : 32 Cr. L. J. 236

—if the provisions of sec. 367 are not complied with the aggrieved person can justly take exception to the judgment and ask for its reversal. Where the facts are intricate and the evidence is contradictory it is incumbent on the Court of appeal to set out the points for decision, the decision and the reasons therefor with sufficient clearness in order to enable H. C. to satisfy itself that the matter has been properly considered by the appellate Court. 1931 Pat. 379 : 134 I. C. 619 : I. R. 1931 Pat. 475 : 32 Cr. L. J. 1197 : 12 Pat. L. T. 601 : 1931 Cr. C. 907, 42 I. C. 722 *fol.*

S. 370.

—where the M. failed to comply with the provisions of sec. 370 and it appeared that there was gross delay in the trial and that the records were kept in a slovenly and unsatisfactory manner, held that the procedure adopted was reprehensible. 35 C. W. N. 367, 868.

S. 374.

—the powers of the H C are not limited in the case of a reference as they are ordinarily limited in the case of appeals from a trial held by jury. The H C can come to the conclusion that the finding of the jury is unsafe and unjustified by the evidence on the record but the Court, for that purpose, deal with the case merely on paper-book. The H. C. will always attach the greatest possible weight to the conclusion of the jury as they had the opportunity to watch the development of the case in all its various stages. 34 C W N 1154: 1931 Cal. 178: I. R. 1931 Cal. 107: 125 I C 811 32 Cr. L. J. 190: 1931 Cr. C. 242 F. B.

S. 397.

—the word "sentence" in s. 397 includes an order of committal to or detention in prison within the meaning of s. 123 Cr. P. C. So where a convict who was committed to prison for two years under s. 123, escaped from confinement and was captured and sentenced to six months rigorous imprisonment, the second sentence should run consecutively to the first. 1931 Rang. 127: 9 Rang. 110 I R 1931 Rang. 133: 32 Cr. L. J. 714: 131 I. C. 501: 1931 Cr. C. 522, 30 A. 334 fol. (2 Weir 452, 27 M. 525, 31 M. 515, 31 B. 326, 37 B. 178, 2 L. B. R. 72) *not fol.*

—the H C. has power under this sec. to direct separate sentences of separate trials to run concurrently. 33 Bom. L. R. 1163 1931 Bom. 529: 134 I. C. 1239: 1931 Cr. C. 917, 51 A. 888 fol.

S. 401.

—where in a case of murder the plea of insanity raised by the accused was not made out but there were exceptional circumstances in his favour, the Court while affirming the conviction forwarded the papers to the Local Govt. so that the Governor might take such action under this sec. as might be deemed proper. 1931 Lab. 276: I. R. 1931 Lab. 931: 134 I. C. 773: 1931 Cr. C. 532: 32 Cr. L. J. 1230: 32 P. L. R. 331, 41 I. C. 985 fol.

—where the murder was committed under religious delusion the H. C. recommended to the Local Govt. a substantial reduction in the sentence of transportation of life. 1931 M. W. N. 719.

S. 403.

—a pleader who has been convicted under s. 3 of the Police Incitement to Disaffection Act and under s. 17 of the Criminal Law Amendment Act can be dealt with in the exercise of its disciplinary jurisdiction by the H. C. under s. 12 of the Legal Pr. Act. There is in such case no question of any indictment or trial for the same offence under any other law. 1931 369: 134 I. C. 945: I. R. 1931 Pat. 497: 32 Cr. L. J. 1256: 12 Pat. L. T. 773: 1931 Cr. C. 897, F. B.

—where the M. was at fault in not framing a charge under both the ss. 379 and 453 I. P. C. and the accused having been acquitted under the latter sec. a fresh complaint regarding the

S. 403—*contd.*

offence was made and it further appeared that the complainant did not have an opportunity of having the matter investigated, held that a second prosecution on the same facts was permissible. 35 C. W. N. 1182.

—the only meaning of the explanation is that an order dismissing a complaint is not an acquittal in the sense that it bars a further inquiry until it has been set aside. 1931 M. W. N. 1149 F. B. 29 M. 126, 28 C. 211 *fol.*

S. 408.

—this sec. grants the right of appeal and any restriction of that right of appeal must be very strictly construed in favour of the subject. 35 C. W. N. 752; 134 I. C. 1196; 1931 Cal. 642; 1931 Cr. C. 842.

—where two accused were tried by the Asst. Sessions Judge and one of them was sentenced to 3 years' and the other to 7 years' rigorous imprisonment the proper forum for appeal was the H. C. and not the Sessions Court. 1931 M. W. N. 1068.

S. 410.

—where it appeared that the conviction was based partly on inadmissible evidence and that the motive for the occurrence had been exaggerated, held that the jury could have been misled by the procedure and that the H. C. should interfere in appeal. 52 C. L. J. 423; 129 I. C. 680; 32 Cr. L. J. 42; 1931 Cr. C. 63; 1931 Cal. 65.

S. 412.

—where the accused person pleads guilty on a charge under s. 380 I. P. C. but the said plea is found upon an erroneous conception of one's right in the property, s. 412 Cr. P. C. is inapplicable to the case and cannot shut out one's right of appeal. 53 A. 437; 1931 All. 265; I. R. 1931 All. 309; 1931 A. L. J. 201; 32 Cr. L. J. 570; 130 I. C. 693; 1931 Cr. C. 425.

—where an accused is convicted on his own plea of guilty and is merely bound over he has no right of appeal, although he may have been tried along with others who were convicted and given appealable sentences. 1931 Sind 151; 25 S. L. R. 337; I. R. 1931 Sind 123; 134 I. C. 379; 33 Cr. L. J. 1142; 1931 Cr. C. 923.

S. 413.

—the provisions of sec. 413 which restricts the right of appeal conferred by s. 408 must be strictly construed. Where the M. passes two separate sentences of fine of Rs. 40 on the accused, the aggregate of the two sentences may be taken into account so as to save the right of appeal. 35 C. W. N. 752; 1931 Cal. 642; 134 I. C. 1196; 1931 Cr. C. 842.

S. 415A

—where one of several accused has a right of appeal it enures for the benefit of the other accused as well. 35 C. W. N. 752; 1931 Cal. 642; 134 I. C. 1196; 1931 Cr. C. 842.

S. 415 A—*contd.*

—where an accused is convicted on his own plea of guilty and is merely bound over, he has no right of appeal, although he may have been tried along with others who were convicted and given appealable sentences 1931 Sind 151 : 25 S. L. R. 337 : I. R. 1931 Sind 123 : 134 I. C. 379 : 32 Cr. L. J. 1142 : 1931 Cr. C. 925.

S. 417

—an appeal from an acquittal stands on the same footing as one from conviction. But sound principles of criminal jurisprudence require that the indications of error in a judgment of

133 I. C. 795 : 1 R. 1931 All. 747 : 30 Cr. L. J. 1073 : 1931 Cr. C. 1048, 1931 All. 439 : 1931 Cr. C. 711 : 20 All. 459, *contra* Appeals against acquittal are to be judged by a standard different from that applicable to those against conviction 1931 Lah. 465 : I. R. 1931 Lah. 833 : 133 I. C. 865 : 32 Cr. L. J. 1079 : 1931 Cr. C. 689.

were some grounds to justify an acquittal, or even just a reasonable doubt supporting the acquittal the H. C. will not interfere. 59 M. L. J. 520 : 125 I. C. 558 : I. R. 1930 Mad. 814 : 31 Cr. L. J. 897 : 1930 Cr. C. 761 : 1930 Mad. 704.

... as because a Judge or a J. has taken a wrong view of ...

M. W. N. 810.

—whatever may be the value of judgment of a trial court which has and had an opportunity of seeing the witness and observing their demeanour, no such reason can apply where the trial court convicts the accused and the first appellate court acquits him. In such a case the H. C. is in a better position to weigh the evidence

S. 417—*contd.*

than the lower appellate court and can interfere to set aside the order of acquittal. 1930 Lah. 403; I. R. 1931 Lab. 201; 129 I. C. 489; I. R. 1931 Lah. 201, 11 P. R. 1903 Cr. *Diss. from* (1927 Lah. 178, 7 P. R. 1904, 1929 Pat 491) *Ref.*

S. 421

—s. 421 read with s. 423 Cr. P. C. makes it incumbent on the appellant to show the merits, and an appeal on the merits, and an appeal on the merits of the appellant. 11 Lah. 31 Puaj. L. R. 501; 1930 Cr. C. 685.

—so long as reasonable opportunity is given to the appellant or his pleader to be heard in support of the appeal there is no requirement of postponing of the hearing of an appeal. 53 M. 855; 59 M. L. J. 836; 127 I. C. 803; I. R. 1930 Mad. 1043; 1930 M. W. N. 686; 1930 Cr. C. 1039; 1930 Mad. 863, 1924 M. W. N. 893 *considered*.

—it cannot be said as a general rule of law that the court is bound to read for the papers before taking action under s. 421 *Above case.*

—appeals under s. 476 B are subject to all the provisions applicable to criminal appeals as laid in s. 419 and the following sections. Such an appeal can be disposed of summarily by the Dt. M. under s. 421 Cr. P. C. 34 C. W. N. 923; I. R. 1931 Cal. 157; 129 I. C. 317; 1931 Cr. C. 35; 32 Cr. L. J. 325; 1931 Cal. 3, 1931 Pat 144; 131 I. C. 536; I. R. 1931 Pat. 216; 32 Cr. L. J. 735; 1931 Cr. C. 360.

—where an appeal is summarily dismissed under s. 421 it is once with the s. L. T. 243; 31 695 *Ref.*

—though in many cases it may be useful to hear the pleader again to elucidate some point raised by a perusal of the record, there is no illegality in dismissing the appeal summarily without the record is called for. 1930 Pat. 4 Jr. L. J. 1131; 12 Pat. L. T. 147; 1 I. C. 1007 *Diss. from*. (1925 Cal. 1

—under s. 421 Cr. P. C. the court can dismiss a jail appeal summarily. The law does not mean to fetter the discretion of the Court receiving such appeals and it is not necessary for the Court to record its reasons for dismissing appeal. 1931 All. 555; 1931 A. L. J. 644; 1931 Cr. C. 897.

S. 422

—an appeal cannot be admitted on the limited ground of sentence only. If it is admitted the whole appeal must be heard; the only exception to this rule is to be found in s. 412. 1931 Pat. 351; I. R. 1931 Pat. 323; 32 Cr. L. J. 1017; 12 Pat. L. T. 539; 1931 Cr. C. 793, (41 C. 406, 6 Pat. L. T. 381) *Ref.*

S. 423

—a private prosecutor such as a complainant is not entitled to be heard under s. 423, 35 C. W. N. 976 : 51 C. L. J. 144.

—improper admission of evidence which perplexed the jury is a point of law on which the H. C. can interfere with the verdict of the jury. 55 B. 435 : 1931 Bom. 311 : 1 R. 1931 Bom. 396 : 133 I. C. 749 : 32 Cr. L. J. 1077 : 33 Bom. L. R. 305.

S. 424

—where after the hearing of the criminal appeal the Judge was transferred and he subsequently wrote the judgment and forwarded the same to his successor who delivered the same, held that the judgment was passed without jurisdiction and must be set aside on revision. 35 C. W. N. 838 : 1931 Cal. 637 : 134 I. C. 1265 : 1931 Cr. C. 837.

S. 428

—irrespective of whether the trial court be civil, criminal or revenue, the procedure on appeal under s. 476 B is a procedure under the Cr. P. C. But in so appeal under s. 476-B the appellate court cannot take additional evidence under s. 428 as that sec. is specifically limited to appeals under the chapter in which it occurs. 1931 Lah. 761 : 1931 Cr. C. 1065 F. B. *contra*, the appellate court acting under s. 476-B has inherent power to take additional evidence. 1931 Sind. 115 : 1931 Cr. C. 733 : 25 S. L. R. 68 : 1 R. 1931 Sind. 159 : 134 I. C. 1007, 51 M. 603 *not fol.*, 44 M. 57 *fol.*

S. 429

—the case laid before a third Judge under s. 429 is the complete case in so far as the two Judges who first heard the appeal have differed as regards particular appellants but not the case of the other appellant as to whom they did not differ. 1931 Lah. 513 : 1 R. 1931 Lah. 573 : 132 I. C. 381 : 32 Cr. L. J. 868 : 1931 Cr. 737.

S. 435

—the powers of the H. C. under s. 435 are discretionary. The H. C. did not interfere where the lower court refused adjournment on application under s. 526 (8) but it appeared that the application was not *bona fide*. 35 C. W. N. 1112 : 1931 Cal. 626 : 134 I. C. 1057 : 1931 Cr. C. 812.

—the word "made" in sec. 435 (4) means not only "made" but "entertained and decided." So where the Dt. J. to whom an application under this sec. was originally made declined to go into the merits of the application and said that the more convenient course would be to represent the application to the Sessions Judge, it is no bar to the latter entertaining a similar application. 54 M. 842 : 134 I. C. 993 : 1 R. 1931 Mad. 878 : 1931 M. W. N. 771 : 1931 Mad. 772 : 61 M. L. J. 123 : 1931 Cr. C. 1028

S. 436

—a S. J. has no power to make an order directing further inquiry by a particular M. subordinate to a Dt. M. 1930 Mad. 983 : I. R. 1931 Mad. 223 : 129 I. C. 79 : 32 Cr. L. J. 226 : 1930 M. W. N. 911 : 1930 Cr. C. 1199.

—"further inquiry" which may be directed under s. 436 is not confined to a further inquiry under s. 202. 1931 Pat. 50 : I. R. 1931 Pat. 177 : 32 Cr. L. J. 548 : 130 I. C. 529 : 1931 Cr. C. 146 : 12 Pat. L. T. 729, 1929 Pat. 469 *Ref.* 1925 Cal. 576 *Dist.* 1928 Pat. 12 *Doubted.* 1929 Pat. 644 *approved.*

—a subordinate M. directed to make further enquiry into a warrant case by an order under s. 436 has all the powers provided for by chap. XXI of the Cr. P. C. 1931 Rang. 225 : 3 Rang. 239 : 132 I. C. 822 : I. R. 1931 Rang. 214 : 32 Cr. L. J. 950 : 1931 Cr. C. 865 : 1931 Cr. C. 865 F. B.

S. 438

—in the case of an acquittal where the Local Govt. does not appeal or where the Dt. M. does not move the Local Govt. to appeal, the H. C. will not, (as a general rule), entertain reference direct under s. 438. 1931 Lah. 533 : I. R. 1931 Lah. 912 : 32 P. L. R. 789 : 134 I. C. 208 : I. R. 1931 Lah. 912 : 1931 Cr. C. 733, (24A. 346, 25A 128, 38 M. 1028) *Rel on.*

—the practice as regards reference in case under s. 145 Cr. P. C. is exactly the same as the practice in any ordinary case and there ought to be no reference merely upon differences of opinion as to the value of evidence. Even in case of error of law reference should not be made unless it is of such a character as to call for interference by higher authority. 58 C. 1031 : 35 C. W. N. 374 : 1931 Cal. 619 : 32 Cr. L. J. 1237 : I. R. 1931 Cal. 915 : 134 I. C. 915, 1931 Rang. 225 : 132 I. C. 822 : 9 Rang. 239 : 32 Cr. L. J. 950 : 1931 Cr. C. 865 F. B.

S. 439

—it would not be fair in revision to alter a conviction under the Arms Act to one under the Explosives Act. 53 A. 226 : 130 I. C. 626 : I. R. 1931 All. 290 : 32 Cr. L. J. 564 : 1930 A. L. J. 1467 : 1931 All. 17 : 1931 Cr. C. 33.

—competency of a friend of a person convicted to apply in revision, discussed. 58 Cal. 1303 : 1931 Cal. 410 : 35 C. W. N. 716 : I. R. 1931 Cal. 558 : 132 I. C. 174 : 32 Cr. L. J. 844 : 1934, Cr. C. 506.

—where
Hate court acc
439 in all case
1931 Lah. 761 :

—where
or Revenue Cou
can exercise its
W. N. 775 : 1931 Cal. 604 : 134 I. J. 1003 : 1931 Cr. C. 100, 40 C.
477 *Rel. on.*

S. 439—contd.

—it is brutal thing for a man to heat a woman with a heavy stick and to hurt her on vital parts causing such injuries that she died in 2 days. A sentence of 1 year's rigorous imprisonment in such a case is too short and should be enhanced. *Above case.*

S. 446.

—the effect of s. 446 is to debar a M. from cancelling a charge which has once been framed against a person who has claimed to be tried under the provisions of Chap. XXXIII as a European British Subject and whose claim to be so tried has been upheld by a competent Court under s. 443. 1931 All. 366; 132 I. C. 332; I. R. 1931 All. 492; 32 Cr. L. J. 866; 1931 A. L. J. 526; 1931 Cr. C. 622, 1929 All. 84 *Ref.*

S. 471.

—the remedy by way of *habeas corpus* cannot be invoked unless it is shown that the retention of the minor child is illegal or improper. 54 M. 759; 134 I. C. 1215; 1931 Cr. C. 1029; 61 M. L. J. 219; 1931 Mad. 773.

S. 476.

—when a person makes one statement in the committing Court and a contradictory statement to the Sessions Court, the Sessions Judge can complain in the alternative that one or the other of the statements must be false. A false statement at the committal stage which eventually on a trial is "in relation to" the trial. 61 M. L. J. 914; 134 I. C. 1137; 1931 M. W. N. 1061; 1931 Mad. 778; 1931 Cr. C. 1034, 100 I. C. 537 *fol.*

—the mere fact of a telegram sent by the complainant to the D. S. P. being exhibited and filed in the case does not make the contents of it a matter "in relation to the proceeding" in the Court so as to give the court jurisdiction to action under s. 476 against persons not parties to the proceeding but whose names are mentioned in the telegram. 1930 M. W. N. 1130 F. B.

... in for the transfer of a case
... was seen coming out from
... orted by an affidavit and the
... by a counter-affidavit which
was supported by the statement of the M. and complaint under s. 193 I. P. C. was ordered to be drawn up against the complainant, held that it was an unwise course to act upon the counter-affidavit when the difficulty could
under s. 476. 58 C. 1211;
35 C. W. N. 690; 53
438.

—sub-sec. (4) of sec. 195 means that where a party to a proceeding is alleged to be guilty of conspiracy to commit or of abetment of an offence of forgery committed in respect of a document produced or given in evidence in a proceeding in any court the bar imposed by s. 195 applies but a person who is not a party gets

S. 476—contd

the question of expediency and has come to conclusion that an enquiry is expedient. A finding that the evidence given was false, followed by a complaint would be sufficient to raise the inference that the Judge found that an enquiry was expedient. 58 C. 1117; 35 C. W. N. 406; 1931 Cal. 190; I. R. 1931 Cal. 544; 132 I. C. 160; 32 Cr. L. J. 84; 1931 Cr. C. 254, (55 C. 279 p. 284, 52 C. L. J. 53) *Ref*.

—it cannot be said as a rule that in all cases where the words of s. 476 are not copied out in the judgment the H. C. will necessarily interfere in revision. 58 C. 965; 1931 Cal. 760; 1931 Cr. C. 1006; I. R. 1931 Cal. 914; 134 I. C. 914; 32 Cr. L. J. 1236.

—the dismissal of an application to direct a complaint under s. 476 is no bar to the jurisdiction of the M. to entertain a second application for the same purpose. 1931 M. W. N. 1048; 61 M. L. J. 686; 34 L. W. 629, 29 M. 126, 31 M. 543, 8 Pat. 736 *fol*.

—when a Court refuses to complain under s. 476 it amounts to an order to the effect that it will not complain and is governed by Art. 154 of the Limitation Act. 1931 M. W. N. 1064, 52 B. 164, 52 C. 1009. *Ref*.

—where an order under s. 476 is passed by a Civil or Revenue Court, s. 439 Cr. P. C. has no application and the H. C. can exercise its revisional powers under s. 115 Cr. P. C. 35 C. W. N. 775; 1931 Cal. 604; 134 I. C. 1063; 1931 Cr. C. 756, 40 C. 477 *Rel. on*, 12 Pat. L. T. 671; 1931 Cr. C. 999; 1931 Pat. 411, 7 Pat. L. T. 199. *Contrn.* revision lies under s. 439, 1931 Lab. 761; 1931 Cr. C. 1065 F. B., 1931 Lab. 105; 32 Cr. L. J. 647; 131 I. C. 216; 32 P. L. R. 46; 1931 Cr. C. 169.

S. 476-B

—only one appeal lies under s. 476-B. Therefore when an appellate court makes a complaint under that sec. on appeal or refuses to make a complaint, no further appeal lies to the H. C. 53 A. 416; 1931 A.H. 305; 32 Cr. L. J. 367; I. R. 1931 A. 136; 129 I. C. 264; 1931 Cr. C. 449; 1931 A. L. J. 117; 55 C. 765 *fol*, 5 Pat. 262 *not fol*.

—irrespective of whether the trial court be civil, criminal or revenue, the procedure on appeal under s. 476-B is a procedure under the criminal Pr. Code. The appellate court cannot make a remand to the trial Court but it can itself make an inquiry. 1931 Cr. C. 1065; 1931 Lab. 761 F. B.

—appeals under s. 476-B are subject to all the provisions applicable to criminal appeals as laid down in s. 419 and the
by the
7; I. R.

herent
s. L. R.
M. 633
B.

S. 476-B—*contd.*

—an appeal lies to the H. C. from the order of the Dt. Judge making a complaint on appeal from the subordinate Judge who had refused to do so. 10 Pat. 446: 1931 Pat. 343: 133 I. C. 683: 32 Cr. L. J. 1065: 1931 Cr. C. 791: 5 Pat. 262 *fol.* 55 C. 765, 6 Lah. 56 *not fol*

—where an order is passed under s. 476-B the H. C. can interfere with the same only if it falls within one of the grounds mentioned in s. 115 C. P. C. 34 C. W. N. 914: 52 C. L. J. 87: 1930 Cal. 721: 1930 Cr. C. 1129: 129 I. C. 561: I. R. 1931 Cal. 209.

—the words "such a complaint" in s. 476-B. are not confined to complaint or application by some party. Even complaints made by the court of its own motion are appealable. 59 M. L. J. 850. I. R. 1931 Mad. 143: 128 I. C. 719: 32 Cr. L. J. 200: 1930. M. W. N. 991: 1931 Mad. 16.

S. 480.

—in the absence of direction by the Local Govt. as regards the Sub-Registrar being a civil court within the meaning of ss. 480 and 482 Cr. P. C. an offence under s. 228 I. P. C. if committed before a Sub-Registrar, cannot be dealt with under ss. 430 and 482 Cr. P. C. 57 C. 1007: 34 C. W. N. 56: I. R. 1930 Cal. 629: 125 I. C. 853: 31 Cr. L. J. 942: 1930 Cr. C. 542.

S. 481.

a consent order under s. 488 is, as such, no bar to a suit by the husband for the restitution of conjugal rights unless the husband had consented not merely to the order for maintenance but that in all circumstances the wife should live apart from him. 54 M. 558: I. R. 1931 Mad. 527: 131 I. C. 463: 1931 Cr. C. 546: 1931 Mad. 482: 193 M. W. N. 364.

—the husband's father cannot be ordered to make monthly allowance for the maintenance of the sister-in-law. 32 Cr. L. J. 1175: 1931 Lah. 532: 134 I. C. 483: 32 P. L. R. 346: 1931 Cr. C. 772. not such order can be passed against the mortgagee of the husband. 35 C. W. R. 692: 1931 Cal. 644: 134 I. C. 1199: 1931 Cr. C. 844.

the residence of the husband in the matter of recording case is likely to make notes 142: 129 I. C. 1499.

—there is nothing in the language of s. 488 (8) Cr. P. C. which makes it necessary to assign a strict or technical meaning to the words "as denoted permanent residence" where the couple and the proceedings are on where the husband has some other permanent residence. 54 B. 548: 1930 Bem. 348: 127 I. C. 179: 31 Cr. L. J. 1157: 1930 Cr. C. 780.

S 491

—declaration of Martial law, power of the court to consider the necessity—Sholapur Martial Law Ordinance, IV of 1930; 55 B. 263 1931 Bom 37; I. R. 1931 Bom. 196; 129 I. C. 596; 32 Cr. L. J. 403; 32 Bom L. R. 1613.

S 494

—the terms of s. 494 are very wide and the court has been given a discretion. The test whether in giving consent for withdrawal of prosecution the Court has been influenced by circumstances which ought not to have influenced the court. 54 C. L. J. 253; 36 C. W. N. 16, 1931 Cal. 607; 134 I. C. 1045; 1931 Cr. C. 759 In a suitable case the court may still give consent to the public prosecutor to withdraw from the prosecution if it finds that there are good reasons for doing so. Consent is not to be given as a matter of course neither is it to be reasonably withheld. Legality of the action of a Public Prosecutor in entering appearance simply for the purpose of withdrawal considered. *Same case*

S 496

—the principle to be deducted from ss. 496 and 497 is that grant of bail is the rule and refusal is the exception. An accused person is presumed under the law to be innocent till his guilt is proved. An accused person is entitled to every freedom and every opportunity to look after his case and he will be in much better position to look after his case then if he were in custody. 1931 All. 356; I. R. 1931 All. 858; 134 I. C. 842; 32 Cr. L. J. 1271; 1931 A. L. J. 515; 1931 Cr. C. 612.

S. 497

—s. 498 is not controlled by s. 497, except where there are not reasonable grounds from believing that the accused is not guilty in which case it becomes the duty of the court to release him. 1931 All. 504; 1931 Cr. C. 892; 1931 A. L. J. 773.

—s. 497 (1) has no application to an application for bail presented by person accused under a 121-A, I. P. C. during their trial even if it is made before a M. Where an investigation or inquiry or trial has been proceeding, the appropriate provision applicable is sub-sec. (2) of s. 497. 1931 All. 356; I. R. 1931 All. 858; 134 I. C. 842; 32 Cr. L. J. 1271; 1931 A. L. J. 515; 1931 Cr. C. 612.

—the discretion of the H. C. or of the Sessions Court in granting bail is not limited to the consideration set out in s. 497 but that consideration is material to be considered along with other circumstances. *above case*.

S. 498

—no accused person has any right under the law to be allowed to argue in person on application for bail but such permission may be given under special circumstances. 1931 All. 356

S. 498—contd.

I. R. 1931 All. 858 : 134 I. C. 842 : 32 Cr. L. J. 1271 : 1931 A. L. J. 515 : 1931 Cr. C. 612.

—where several accused are tried for an offence under s. 121A I. P. C. and several witnesses examined and several documents filed the best course is to refrain from giving separate reasons in the case of each accused as to the refusal of bail and simply to state the final conclusions 1931 All. 504 : 1931 Cr. C. 892 : 1931 A. L. J. 773.

—the Legislature has given the H. C. and the Sessions Court discretion to act under s. 448 unfettered by any limitation. 134 I. C. 842 : 32 Cr. L. J. 1241 : I. R. 1931 All. 858,

—as regards serious nonbailable offences punishable with death it cannot be said that the grant of bail is the rule and the refusal the exception. 1931 All. 504 : 1931 Cr. C. 892 : 1931 A. L. J. 773.

S 516-A

—where a motor driver is prosecuted for an offence under s. 338 I. P. C. It cannot be said that the car has been used by the accused for the commission of the offence within the meaning of s. 516A and it is illegal for the M. to detain the motor car pending the trial. 1931 Lah 565 : 1931 Cr. C. 835, 4 P. L. R. 1904.

S. 517

—where a motor bus was sold under a hire-purchase system and the hirer having defaulted the owner launched a criminal case for theft but the charge was not proved and it appeared that the criminal proceeding was launched in order to evade a civil suit the M. should restore the property to the hirer from whose it was seized and direct the complainant to bring a civil suit. 35 C. W. N. 198 : 1931 Cal. 455 : I. R. 1931 Cal. 614 : 132 I. C. 902 : 32 Cr. L. J. 933 : 1931 Cr. C. 607.

S. 522

—a third person who was not a party may be dispossessed if the court finds that possession was with the complainant and he was dispossessed by force *a fortiori* in the case of an accused person who had an opportunity of disposing complainant's possession and proving his own such an order is legal. 55 B. 155 : 1931 Bom. 77 : I. R. 1931 Bom. 145 : 129 I. C. 337 : 32 Cr. L. J. 275 : 32 Bom. L. R. 1496.

—though in the case of an order under s. 522 a notice is usually given, specially to third parties, it is not absolutely necessary in law, and its absence does not render the order bad, *above case*.

—this sec. gives the convicting court the power to make a consequential order which materially follows from its finding that the complainant was dispossessed by force. Though a conviction is necessary under this sec. but not necessarily the conviction of all the accused. 55 B. 155 : 1931 Bom. 77 : I. R. 1931 Bom. 145 : 129 I. C. 337, 32 Cr. L. J. 275, (31 O. 691 F. B., 23 B. 494) *fol.* 37 A. 654 *Dist.*

S 526

—the fact that the trying M. is a personal friend of the complainant is no ground whatever for transferring the case because Magistrates and Judges quite appreciate the duty of being impartial. 1931 Bom. 206. 131 I. C. 891; 32 Cr. L. J. 805; 1931 Cr. C. 350.

—it is desirable that the practice which prevails in the H. C. in applications for transfer of furnishing the applicant with a copy of any report of the Subordinate Court should be followed in the Chief Presidency Magistrate's Court. 1931 Bom. 206; 33 Bom. L. R. 311. 131 I. C. 891. 1931 Cr. C. 350; I. R. 1931 Bom. 315.

—where an affidavit is filed along with the application for transfer under s. 526 and it purports to have been sworn before one officer of the Dist. Judge's Court and not before H. C. as required by s. 539, the said affidavit not being sufficient for the purposes of s. 526 (4) the application for transfer cannot be entertained, 1931 Cal. 710. 134 I. C. 1278; 1931 Cr. C. 990.

—a Magistrate's refusal to grant an application for adjournment under s. 526 (8) to move the H. C. is not justified but it is an irregularity which can be cured by s. 537 and cannot be a ground for transfer of the case. 35 C. W. N. 1112; 1931 Cal. 626; 134 I. C. 1057; 1931 Cr. C. 810.

—the provision of law contained in sub sec. (8) is imperative and where the M. does not grant adjournment, all the subsequent proceedings are illegal and except as regards any emergent order that may be found necessary in the interest of justice, without jurisdiction. 1931 Bom. 411; 134 I. C. 361; 32 Cr. L. J. 1161; 1931 Cr. C. 726; 33 Bom. L. R. 668 (53 M. 165, 35 C. 455; 1929 All. 268, 1930 All. 263) *fol.*

S. 537

—when a charge is defective under s. 234 as having been presented out of time the trial is vitiated. The defect in the charge is not mere irregularity to be cured by s. 537, 34 C. W. N. 959; I. R. 1931 Cal. 112; 128 I. C. 816; 32 Cr. L. J. 195.

—where the disobedience to an order under the Police Act was described in the charge as an offence under s. 62-A (6) of the Calcutta Police Act and though it was also an offence under s. 183 I. P. C. it was not so described, held that the description given must be considered as incomplete and the provisions of ss. 225, 223 and 537 Cr. P. C. apply. 53 C. 1303; 35 C. W. N. 716; I. R. 1931 Cal. 558; 32 Cr. L. J. 844; 133 I. C. 174; 1931 Cr. C. 506; 1631 Cal. 410.

—an erroneous decision as to the right of reply cannot be treated as such an illegality or such a substantial irregularity as to vitiate the whole proceedings and to call for a retrial. 1931 Lah. 534; I. R. 1931 Lah. 660; 123 I. C. 692; 32 Cr. L. J. 944; 1931 Cr. C. 774; 32 P. L. C. 435.

—failure to conduct an investigation into an offence by the police properly cannot vitiate a trial which has been started on the final report after the investigation where there is no allegation of irregularity or illegality in the conduct of the trial.

S. 537—*contd.*

131 I. C. 17: 1931 Pat. 150: 32 Cr. L. J. 633: 12 Pat. L. T. 398: 1931 Cr. C. 390.

—the mere failure to summon the full number of jurors will not by itself vitiate the trial unless it is shown that the accused were in any manner prejudiced by the alleged irregularity. 10 Pat. 107: I. R. 1931 Pat. 243: 131 I. C. 801: 32 Cr. L. J. 797: 12 Pat. L. T. 798: 1931 Pat. 152, 57 C. 1228 F. B., *fol.*

—non-compliance with the provisions of s. 342 Cr. P. C. does not amount to a mere irregularity. 32 Cr. L. J. 623: 130 I. C. 845.

—the provisions of s. 526 (2) being imperative the refusal of an adjournment contrary to the terms of the sec. vitiates the whole subsequent proceedings, it being an illegality and not merely an irregularity. 1931 Bom. 411: I. R. 1931 Bom. 473: 134 I. C. 361: 33 Bom. L. R. 668. 32 Cr. L. J. 1161. *contra below.*

—a Magistrate's refusal to grant an application for adjournment to move the N. C. is not justified but it is an irregularity which can be cured by applying s. 537. 35 C. W. N. 1112: 134 I. C. 1057: 1931 Cr. C. 810. I. R. 1931 Cal. 626.

—a trial should be set aside for illegality or irregularity (1) if a really important provision of law has been violated, or (2) if the accused person has been or may have been prejudiced by the irregularity or illegality committed. 1931 Rang. 244: 9 Rang. 506: 1931 Cr. C. 834: 134 I. C. 500: 32 Cr. L. J. 1190 F. B., 5 Rang. 53 P. C. *Ref.*

S. 539.

—where an affidavit is filed along with the application for transfer but it purports to have been sworn before the officer of the District Judge's Court the said affidavit not being sufficient for the purpose of s. 526 (4) the application for transfer cannot be entertained. 114 I. C. 1278: 1931 Cr. C. 990: 1931 Cal. 710.

S. 540.

—there is nothing in s. 113-A Cr. P. C. which can exclude the exercise of the court's inherent powers under s. 540 Cr. P. C. 58 C. 461: I. R. 1931 Cal. 862: 114 I. C. 574: 1931 Cr. C. 679: 1931 Cal. 527.

S. 541.

—a notification issued by the Local Govt. under s. 541 Cr. P. C. prescribing Police custody for approvers instead of detention in jail or judicial lock up is *ultra vires*. 1931 Lah. 151: 13 Lah. 604 191 Cr. C. 625: 131 I. C. 625: 32 Cr. L. J. 613.

—s. 541 (1) of the code can come into operation only when there is no other law providing for the custody of the approver. The Prisons Act contains such provisions, therefore, the sec. is inapplicable to the case of an approver witness. 1931 Lah. 476: 13 Lah. 615: I. R. 1931 Lah. 615: 32 P. L. R. 493: 112 I. C. 519. 32 Cr. L. J. 913.

S 561 A.

—a complaint outside the provisions of sec. 476 cannot be filed by any Civil, Revenue or Criminal court under its inherent powers except in the case of the H. C. under s. 461 A, 1931 All. 443 : 134 I. C. 225 : I R. 1931 All 801 : 1931 Cr. C. 715 : 32 Cr. L. J. 1105 : 1931 A. L. J. 697.

—where a prisoner complains to a court that he is not treated in accordance with the jail rules the court has jurisdiction to enquire into such a complaint and pass necessary orders. The position of the Subordinate court is not different from the H. C. In this respect. 1931 Lsh 562 : 133 I. C. 59 : 32 P. L. R. 586 : 1931 Cr. C. 850 : 32 Cr. L. J. 988

—though there is nothing in s. 222 (2) to prevent separate trials in respect of various sums of money misappropriated on several different dates the court may in appropriate cases stop the trial if it is shown to be oppressive or an abuse of the process of the court. 129 I. C. 750 : 59 M. L. J. 854 : I. R. 1931 Mad. 219 : 1930 Cr. C. 1191 : 1930 Mad. 978

Cross Cases.

—There is no provision in the Code to try two cross-cases at the same time before the same jurors. 54 C. L. J. 146 : I. R. 1931 Cal. 896 : 32 Cr. L. J. 1233 : 134 I. C. 896 : 1931 Cal 709 : 1931 Cr. C. 969

Penal Code.**S. 53.**

—it is altogether inappropriate to add a fine to a substantial term of imprisonment. It is only in very exceptional circumstances that it is suitable and appropriate to inflict a fine as well as a substantial term of imprisonment. 35 C. W. N. 519 : 1931 Cal. 710 : 134 I. C. 1136 : 53 C. L. J. 455 : 1931 Cr. C. 990.

S. 124-A.

—just as receivers of stolen property are probably worse than thieves because without receivers there would be less thieves so the publishers of seditious matters are probably worse than the authors of seditious act because the seditious act of the author would be far less extensive in their operation if it were not for the existence of persons able and willing to print and publish them. 53 C. L. J. 182 : 131 I. C. 671 : 32 Cr. L. J. 742 : 1931 Cal. 349 : 1931 Cr. C. 413.

S. 141.

—the promulgation of an order under s. 30 (2) of the Police Act, to the effect that persons directing or promoting assemblies should get the permission of the Dt. Supt. of Police is not a "legal process" but it is the execution of the law as laid down in s. 30 of the Police Act. 54 M. 1025 : 1931 M. W. N. 489 : 61 M. L. J. 842 : 1931 Mad. 484 : 131 I. C. 844, 2 Pat. 134 F. B. Ref.

—the disobedience of a notification under the Police Act resistance to the execution of "legal process" within the

S. 141—*contd*

of s. 141. 55 B. 725 : 1931 Bom. 520 : 1931 Cr. C. 952 : 33 Bom. L. R. 1169.

—when an order prohibiting a procession on a particular day and place is lawfully made that order is law and if the Police are trying to execute that law by preventing the procession from proceeding, the resistance by a body of persons consisting of more than five brings them within s. 141, 58 C. 1303 : 1931 Cal. 410 : I. R. 1931 Cal. 558 : 132 I. C. 174 : 32 Cr. L. J. 844 : 35 C. W. N. 716 : 1931 Cr. C. 506.

S. 147.

—where the order had been published in several newspapers and by distribution of leaflets, and the prisoner had been personally served with a copy of it and the Police officer again drew his attention to it in the presence and hearing of his supporters and those members of the procession who crowded round him, held that five persons had knowledge of the order. 58 C. 1303 : 35 C. W. N. 716 : 132 I. C. 174 : 32 Cr. L. J. 844 : 1931 Cr. C. 506.

S. 188.

—under a 188 mere disobedience of order does not constitute an offence in itself. There must be a disobedience of the order and then it must be shown that the disobedience has a certain consequence or tends to some result. 58 C. 971 : 35 C. W. N. 257 : 130 I. C. 241 : 35 C. L. J. 461 : 32 Cr. L. J. 511 : 1931 Cr. C. 154.

S. 189.

—where two police constables went at night to a house of a *dagi* who was under police surveillance and called him out from a public street and the brother of the *dagi* came out with a *lathi* in his hand and enquired why they came and the facts were explained the accused threatened the constables with breaking their heads and while this happened the *dagi* came out and stood by, held that the accused was guilty under s. 189 I. P. C., 58 C. 392 : 1931 Cal. 448 : 32 Cr. L. J. 1181 : 1931 Cr. C. 600 : 134 I. C. 536

S. 201.

—the accused cannot escape a conviction under this sec. merely because he has been charged also with the principal offence or because there are some grounds for suspicion that he might be the principal culprit. If the a
offence under s. 302 I. P. C. he ma
this sec. 10 Pat. 140 : I. R. 1931
Pat. 172 : 132 I. C. 876 : 1931 Cr. C.
N. 166) *Ref.*

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SUPPLEMENT

TO THE

UP-TO-DATE CRIMINAL REFERENCE

Containing Complete Digest of Criminal Case-law
FROM

1931 to December, 1933

BY

BASANTA KUMAR PAL,
PLEADER.

EASTERN LAW HOUSE,

Law Publishers,

15, COLLEGE SQUARE,

CALCUTTA.

SUPPLEMENT.

ARMS ACT (XI OF 1878).

S. 4

—loose parts of revolver in rusty condition but which may be used if cleaned and oiled are "arms." 37 C. W. N. 234.

S. 14.

—license or exemption not granted under the Act or Rules are invalid and does not protect the accused. 1932 Rang. 180; 1932 Cr. C. 815.

—the word "extent" cannot be limited to mean territorial extent. Possession of unlicensed arms is punishable under s. 19 read with sec. 14. 60 C. 445; 37 C. W. N. 93; 34 Cr. L. J. 363; 1933 Cal. 218; 1933 Cr. C. 299; 1 R. 1933 Cal. 301; 142 I. C. 522.

—s. 14 prohibits an unlicensed person from going armed with any kind of arms. To be in possession or control of arms other than those mentioned in sec. 14 is not an offence, though it is an offence to go armed with those as provided in s. 13. 1933 Cal. 692; 1913 Cr. C. 1154.

S. 19

—all the members of a joint Hindu family are liable for the possession of an unlicensed gun and they may all be tried on the charge. 54 A. 411; 139 I. C. 153; 33 Cr. L. J. 719; 1932 A. L. J. 570; 1 R. 1932 All. 535; 1932 All. 441; 1932 Cr. C. 561.

—mere negotiations for sale to a person who has no license is not in itself an offence; an offence under cl. (a) is committed only if the weapon is actually delivered to a person who has no license. 60 C. 445; 37 C. W. N. 93; 1933 Cr. C. 299; 1933 Cal. 218; 34 Cr. L. J. 363; 1 R. 1933 Cal. 301.

—the possession of arms of which a licensee has not been renewed is punishable under s. 19 (f). *Above case.*

—conviction under this sec. requires the possession of some particular person over that article. The head of the family cannot be committed merely on the ground that some loaded cartridges were found in the grain bin of the house. 1933 All. 112; A. I. R. 1933 All. 195; 1932 A. L. J. 1072; 1933 Cr. C. 160; 1932 A. L. J. 570 *Diss. from.*

—knowledge of possession of arms by associate is not punishable. 37 C. W. N. 201; 1933 Cal. 132; 34 Cr. L. J. 299; 142; I. C. 280; 1 R. 1933 Cal. 246.

S. 20.

—where a person in unlicensed possession of a revolver and cartridges gave the revolver to some one else to conceal it and the possession of the revolver was in some way connected with the political opinions of the accused, the accused was liable to be convicted under s. 20. 37 C. W. N. 195; 1933 Cr. C. 140; 1933 Cal. 124.

S. 20—*contd.*

—what constitutes possession of arms: 37 C. W. N. 509.

—the mere possession of an unlicensed gun is punishable under s. 19 (f) but where there is indication of an intention that the possession may not be known to the police the offence is punishable under s. 20. 60 C. 545.

—this sec. is not restricted to cases of exportation and importation of arms in bulk but applies also to ordinary cases of carrying or possessing arms. 1933 Cal. 692; 1933 Cr. C. 1154.

—where the accused who had a revolver in his possession attempted to run away when the notice came, his intention was that his possession of the revolver might not be known to the police and he was guilty under s. 19 (f) read with s. 20. 1933 All. 627; 1933 Cr. C. 1006.

S. 27.

—the publication printed by the Government of India Press in 1923 entitling it as "Arms Act" and described *inter alia* as "a brief explanation of the Arms Act" is not a notification within this Act. 1932 Rang. 180; 1932 Cr. C. 815.

BAR COUNCILS ACT (XXXVIII OF 1926).

S. 10.

—an advocate deliberately imputation against a judicial officer in an execution case to which he was punished under the Bar Councils Act. 773 Sp. S.

—where a pleader in his capacity as a suitor in the S. C. C. Court, made a grossly improper remark reflecting upon the Judges of the H. C. without the slightest justification and was fined Rs. 75 for contempt of Court, held that fine was not sufficient and that he should be suspended from practice. 1933 All. 224; 1933 Cr. C. 385; 1933 A. L. J. 251.

—the Court would not be justified in dismissing a petition summarily unless it is satisfied that even if the allegations made in the petition be proved, there would be no case for taking action. 1932 Bom. 199; I. R. 1932 Bom. 401; 138 I. C. 543; 34 Bom. L. R. 443; 1932 Cr. C. 303.

BENGAL CRIMINAL LAW AMENDMENT ACT.

(Act of 1925, as amended by Acts of 1930 and 1931)

S. 2.

—the trial under the Act is not a trial under the Criminal Procedure Code, it is trial before a Special Tribunal. If one of the commissioners does not agree with the others he cannot write a separate judgment of his own. I. R. 1932 Cal. 673; 33 Cr. L. J. 837; 140 I. C. 80 F. B.

—a reference under s. 3 (2) of the Supplementary Act of 1925 to the High Court is not invalid merely because it was made by

S. 2—*contd.*

Deputy Magistrate and not by the trying Commissioners. I. R. 1932 Cal. 673 : 33 Cr. L. J. 837 : 140 I. C. 80 F. B.

—Act VI of 1930 does not affect or contravene either the Habeas Corpus Act or the Bill of Rights of the Government of India Act, and consequently is not *ultra vires*. The onus of proving that the petitioner does not belong to the class of persons to whom the Act applies is on the petitioner. 36 C. W. N. 1088 : 1932 Cr. C. 796 : 1932 Cal. 753.

—under this Act the only test to be applied is whether in the opinion of the Local Government there are reasonable grounds for believing certain things about a person. When the H. C. can inquire into the question, 36 C. W. N. 1088 : 1932 Cal. 753 : 1932 Cr. C. 796

—Act IX of 1931 is not *ultra vires* of the powers of the local legislature 59 C. 1440 : 1932 Cal. 470 : 138 I. C. 358 : I. R. 1932 Cal. 455 : 33 Cr. L. J. 609 : 36 C. W. N. 669 : 1932 Cr. C. 460.

—under the Act the opinion of the Local Government whether or not there were reasonable grounds for making an order of detention under s. 2, should be conclusive, the Court cannot go behind the order of detention. *Above case*.

BENGAL EMERGENCY POWERS ORDINANCE.

(XI of 1931)

—when a special Magistrate passes a sentence of imprisonment for only four years and not more, no appeal lies to the High Court even though no Special Tribunal has been constituted. 59 C. 1248 : 1932 Cal. 867 : 1932 Cr. C. 891.

—direction by the M. for trial to begin under the Act on a particular day does not amount to a trial before any Court. 57 C. L. J. 57

—the commitment stage is not included in the phrase "for which he was tried at the promulgation of the Ordinance." Trials begun after the Ordinance are not put in the same position as trials mentioned in the opening language of sec. 34. 37 C. W. N. 312 : 1933 Cal. 354 : 1933 Cr. C. 490.

—sec. 5 Limitation Act is 'not applicable to appeals from Special Magistrates under s. 39 of Ordinance 11 of 1932. The provision as to Limitation contained in sec. 39 (2) of the Ordinance is a specific provision. 37 C. W. N. 195 : 1933 Cal. 124 : 1933 Cr. C. 140.

—sec. 39 does not modify the powers of Superintendence conferred on the H. C. by sec. 107 of the Govt. of India Act. 1933 Cal. 132 : 37 C. W. N. 201 : 142 I. C. 280 : I. R. 1933 Cal. 246 : 34 Cr. L. J. 299.

—s. 51 does not authorise a M. to have the case tried by another M. 37 C. W. N. 195 : 1933 Cr. C. 140 : 1933 Cal. 124.

—where a person is convicted under the ordinance his continued detention after the expiry of the term of the Ordinance is illegal. 60 C. 545.

S. 11.

—where the complaint is made by a judicial officer he cannot be required to execute a bond under s. 11. 13 Pat. L. T. 791.

CONTEMPT OF COURTS ACT.

—when the contempt is committed in the face of a Court it is that court which is competent to decide the matter. 1232 Lah. 502 : I. R. 1932 Lah. 543 : 138 I. C. 878 : 33 Cr. L. J. 675 : 33 P. L. R. 785. F. B.

—a statement made by a counsel before a full Bench that his client is not willing to prove the matter argued before the Bench as constituted is deliberate insult to Court. 1932 Lah. 485 : 1932 Cr. C. 623 : 33 P. L. R. 872 F. B.

—the Court of Commission appointed under the Bengal Cr. Law Amendment Act is a subordinate Court and the H. C. can entertain proceedings for contempt committed before the Commission. 37 C. W. N. 276 : 1933 Cal. 118 : 1933 Cr. C. 134.

—a single act may be both an offence under the Penal Code and may also be a contempt of Court and may be punishable in either or both capacities. 1933 Pat. 142 : 12 Pat. 1 : 1933 Cr. C. 313.

CRIMINAL LAW AMENDMENT ACT. (XVI of 1910)

S. 17.

—disobedience to a command to disperse is not an element of an offence under s. 17. Therefore an admission of having not obeyed the command is not an admission for the purposes of s. 17. 1932 Sind. 26 S. L. R. 345

intentionally assists. 63 M. L. J.

906 : 140 I. C. 107.

—there is distinction between assisting the operation and promoting or carrying out of the same or similar objects. 1932 Lah. 578 : 140 I. C. 608 : 1932 Cr. C. 806

—mere preaching the boycott of British goods and promoting civil disobedience movement do not make so inference identical with the associations declared to be unlawful and the speaker cannot be convicted under s. 17 (1) or (2). 1932 Lah. 615 : 140 I. C. 442 : 1932 Cr. C. 922 : I. R. 1932 Lah. 712.

CRIMINAL PROCEDURE CODE.

S. 4 (1)

—an offence under s. 4 of the Bombay Prevention of Gambling Act is a non cognizable offence. 34 Bom. L. R. 901 : 33 Cr. L. J. 733 : I. R. 1932 Bom. 484 : 33 Cr. L. J. 733.

S. 12.

—a first class Magistrate at Howrah the local area of whose jurisdiction has not been defined under s. 12 (1) has jurisdiction extending over the whole of the District of Howrah. 36 C. W. 796 : 59 C. 1484 : 1932 Cr. C. 888 : 139 I. C. 850 : 33 C. L. J. 858 : 1484 : I. R. 1932 Cal. 663.

S. 16.

—a conviction is bad when one of the Magistrates constituting the Bench absented himself when certain witnesses were examined. 1932 All. 127 : 1932 Cr. C. 152 : 33 Cr. L. J. 200 : 135 I. C. 835 : I R. 1932 All. 99 : 1932 A. L. J. 42.

S. 29-B.

—this sec. authorises the Magistrate in charge of the Central Children Court to try all offences other than an offence punishable with death or transportation for life. 59 C. 856 : 36 C. W. N. 164 : 1932 Cr. C. 479 : 1932 Cal. 487 : I R. 1932 Cal. 479 : 138 I. C. 626 : 33 Cr. L. J. 645.

S. 32.

—this class tries a case under the
as a special Magistrate, he
than that allowed by s. 32

S. 35.

—the word "may" should be read as meaning "shall." 26 S. L. R. 416.

S. 36.

—s. 36 speaks of ordinary powers of Magistrates and the non-inclusion in it or in the third Schedule to take security does not deprive a first class M. of the power under s. 106 to take security. 1932 M. W. N. 151.

S. 42.

—where an arrested person refused to move and the accused refused to assist the police officer, held that he was guilty of an offence under s. 187 I. P. O. 1932 All. 506 : 1932 Cr. C. 594 : I. R. 1932 All. 527 : 139 I. C. 106 : 33 Cr. L. J. 736

S. 48.

—when a person states that he has done certain acts which amount to an offence he accuses himself of committing the offence. But when such statement is made to a police officer, he submits to the custody of the officer within sec. 46 (1) Cr. P. C. and s. 27 Evl. Act. 12 Pat. 241 : 1933 Pat. 149 : 142 I. C. 474 : 34 Cr. L. J. 349 : 1933 Cr. C. 404 : I. R. 1933 Pat. 139.

S. 64.

—resistance to a constable in effecting an arrest or escape from his custody constitutes no offence when authority is proved to be wanting. 1932 Pat. 172 : 13 Pat. L. T. 135 : 138 I. C. 844 : 1932 Cr. C. 347 : 33 Cr. L. J. 706 : I. R. 1932 Pat. 190, 47 M. 442, *fol.*

—for an arrest under s. 54 (7) two things are necessary (1) knowledge of the policeman who effects or attempts to effect the arrest and (2) at the time the police takes action there must be a warrant which has been issued under the Extradition Act. 1933 Cr. C. 304 : 1933 Lah. 159, 1925 Cal. 278 *Approved.*

S. 59.

—under the Chota Nagpur Rural Police Act 1914, a village Choukidar is a Police Officer entitled to receive into custody a person arrested under s. 59 Cr. P. C. 1932 Pat. 214: 13 Pat. L. T. 321 1932 Cr. P. C. 493 33 Cr. L. J. 572. 138 I. C. 95.

—s. 59 only entitles a private person to arrest any person who in his view commits a non-bailable and cognizable offence. The words "in his view" mean "in his presence" or "within sight of him" and not "in his opinion." 1933 Pat. 508 1933 Cr. C. 1079: 14 Pat. L. T. 464.

S. 75.

—signing of warrant by a Magistrate other than the Magistrate who took cognisance of the offence is valid provided he comes within the term "presiding officer" 1932 Pat. 175: 1932 Cr. C. 351: 13 Pat. L. T. 167

S. 79.

—this sec. only requires the name to be endorsed and not also the designation of the constable deputed to execute the warrant. 1932 Pat. 171: 13 Pat. L. T. 135. 1932 Cr. C. 347: 138 I. C. 844: 33 Cr. L. J. 706: I. R. 1932 Pat. 190, 3 P. L. J. 493. *Ref.*

S. 80

—this sec. does not require the fact of the notification to be mentioned in the report. The accused is only to know on what charge he was being arrested and where he was to appear. 1932 Pat. 171: I. R. 1932 Pat. 190: 138 I. C. 844: 13 Pat. L. T. 135: 33 Cr. L. J. 706, 3 P. L. J. 493. *Ref.*

S. 91.

—where a bond is executed undertaking to appear on a particular day and the date is subsequently extended, it is not to be forfeited for the failure of the accused to appear on such adjourned date. 56 B. 220: 1932 Bom. 290: 34 Bom. L. R. 584: 33 Cr. L. J. 628: I. R. 1932 Bom. 386: 138 I. C. 512.

S. 103

—this sec. does not apply to a search under s. 6 of the Bombay Act IV of 1887. The fact that the panchas were not local people is an irregularity curable by s. 537 of the Cr. P. C. 1932 Bom. 610: 139 I. C. 281: I. R. 1932 Bom. 484: 33 Cr. L. J. 733: 1932 Cr. C. 868.

—the gist of this sec. is that there must be respectable
 "responsible" and
 of the witnesses
 different locality
 used to resist the
 32 Pat. 60: 10 Pat.

—an occupant of a house searched must be permitted to attend search. If he kept out and offers resistance to the p officer in making the search he cannot be held guilty of an

S. 103—contd.

under s. 332 I. P. C. 1932 All. 449: 1932 Cr. C. 570: 1932 A. L. J. 530.

—the prosecution must invariably produce the search list and the search witnesses though it can prove the recovery of incriminating article by other evidences as well. 1932-All. 185: I. R. 1932 All. 634: 140 I. C. 246: 33 Cr. L. J. 943: 1932 A. L. J. 104: 1932 Cr. C. 201. *Contra* below.

—the search witnesses need not ordinarily be called. The statute does not lay it upon the prosecution to explain why it does not call the search witnesses. 13 Pat. L. T. 702: 11 Pat. 807, 9 C. W. N. 437 *Diss.*

—a punchnama is not evidence of the accuracy of the evidence as to search. A police officer conducting a search in company with panchas may give evidence of that fact, but if he desires to use the evidence of the panchas he must call those panchas. 1932 Bom. 181: I. R. 1932 Bom. 228: 33 C. L. J. 389: 136 I. C. 868: 34 Bom. C. R. 267.

S. 106.

—ordinarily the person proceeded against under Chap. VIII is entitled to have his witnesses summoned at Govt. expenses unless the M. declines for reasons to be recorded. 1932 Lah. 577: 138 I. C. 765: I. R. 1932 Lah. 529: 33 Cr. L. J. 679: 1932 Cr. C. 805.

—breach of peace does not necessarily mean breach of public peace. 1933 All. 609: 1933 Cr. C. 981: 144 I. C. 954.

—when the offence does not come under s. 106 the M. is to
 applicable. I. R. 1932
 C. 383.
 s. 324 I. P. C. it
 the M. need not record
 139 I. C. 127: 13 Lab.
 2 Cr. C. 581.

S. 107.

ved that a person is likely
 breach of the peace. The
 ing to throw the debtors in
 breach of the peace cannot
 33 P. L. R. 935: 140 I. C.
 does a lawful act in lawful
 susceptibility of persons of
 nt proceedings under s. 107.

—the foundation of jurisdiction under s. 107 is credible information from a police officer or a private person. The police cannot make a preliminary investigation with regard to a proceeding under this chap. 1932 Bom. 196: 34 Bom. L. R. 258: 139 I. C. 628: 1932 Cr. C. 300: 33 Cr. L. J. 797: I. R. 1932 Bom. 521.

—when two proceedings under s. 107 are stated by the Sub-divisional Magistrate of Ulabaria and they are then transferred to the

S. 107—contd.

Deputy M of Howrah the latter M can draw up fresh proceedings against a number of other men also on the strength of the same police report. 1932 Cal 864 59 C. 1484 33 Cr L J. 858 : 36 C W. N 796 : 139 I C 850

—a person against whom an order under s. 107 has been passed is a "convicted" person and the appellate Court can consider the validity of the order 1932 All. 680 1932 A L J 624 : 33 Cr. L. J. 731 : 139 I C 141

—it cannot be said that a person "is" within the local limits of the Magistrate's jurisdiction simply because he is present in Court when the M draws up his order under s. 112 having appeared in obedience to a summons issued by M 1932 All. 162 : 54 A 341 : I. R. 1932 All 120 : 33 C. L J. 230 : 1932 A. L. J. 211.

S. 108

—s. 108 contains a prevention and not a preventive provision of law 1932 Lah 559 : 33 Cr. L J. 831 : I. R. 1932 Lah. 606 : 139 I C. 696 : 1932 Cr C 713 : 33 P L R. 911 Speech not included in the complaint cannot be relied on by the Magistrate, and the amount of the bond shall not be excessive *the same case*.

—the words "disseminates or attempts to disseminate" do not refer to the number of acts performed; a single act is sufficient if there is probability of repetition. 1932 Pat. 213 : 1932 Cr. C. 494 : 33 Cr L J. 711 139 f. C. 88.

S. 109

—a breach of the surety bond is committed when the accused commits or attempts to commit or abets any offence punishable with imprisonment and not when there may be grounds for fresh proceedings. 1932 All 58 : 54 A 335 : I. R. 1932 All 197 : 1932 A. L. J. 112 : 1932 Cr. C 110.

S. 110

—in cases under s. 110 the Sind Judicial Commissioner's Court does not sit as a Court of appeal. 1932 Sind 100 : 136 I. C. 753 : 1932 Cr. C. 540 : I. R. 1932 Sind 49.

S. 112.

—M. proceeding under Chap. VIII can call for a report from the police before issuing a notice under s. 112. 1932 All. 670 I. R. 1932 All. 668 : 140 I. C. 536. 1932 A. L. J. 880 : 1932 Cr. C. 822.

—the discretion to issue notice under s. 112 in pursuance of information received is absolute and uncontrolled by any condition whatsoever. 1932 All 670 : 140 I. C. 536. I. R. 1932 All. 668 : 1932 A. L. J. 880 : 1932 Cr. C. 822.

—after the order under s. 112 has been drawn up and communicated to the accused the Court cannot alter the period for which the accused should be of good behaviour. 140 I. C. 170 : I. R. 1932 Sind 182.

—under s. 123 (3) Sessions Judge has no jurisdiction to direct a Magistrate to pass a fresh order under s. 112 and to try the case

S. 112—*contd.*

de novo. 1932 Sind 88: 26 S. L. R. 200: I. R. 1932 Sind 144: 139 I. C. 783: 1932 Cr. C. 528.

S. 117.

—the sec. does not contemplate registered bond from a surety hypothecating immovable property. 1932 All. 122: I. R. 1932 All. 113: 136 I. C. 65: 33 Cr. L. J. 229.

—where there is evidence that the accused were associated together in a conspiracy in the commission of various acts of robbery, house-breaking and theft, they may all be tried jointly. 12 Pat. L. T. 880, 3 P. L. T. 538 *Ref.*

S. 118.

s. 118 applies equally to an order to give security for keeping the peace under s. 107 and for maintaining good behaviour under ss. 108, 109 and 110. 1932 All. 122: 33 Cr. L. J. 229: I. R. 1932 All. 113: 1932 Cr. C. 147: 1932 A. L. J. 157.

S. 121

—a breach of the surety bond is committed when the accused commits or attempts to commit or abets any offence punishable with imprisonment and not when there may be grounds for fresh proceedings. 54 A. 335: 1932 All. 58: I. R. 1932 All. 197: 1932 A. L. J. 112: 1932 C. C. 110.

S. 123.

—under s. 123 (3) the Sessions Judge has no jurisdiction to direct a Magistrate to pass a fresh order under s. 112 to try the case *de novo*. 1932 Sind 88: 26 S. L. R. 200. I. R. 1932 Sind 144. 139 I. C. 783: 33 C. L. J. 898.

S. 133.

—generally it is expedient for a Magistrate to take action in the case of a noxious trade or occupation for these matters are left to the control of the Municipal Boards. But this alternative remedy does not bar a Magistrate to order a licensed lime-burner to take precautions so as to prevent his trade from being a nuisance to the vicinity. 54 A. 359: 1932 All. 159: 137 I. C. 626: 33 C. L. J. 524: I. R. 1932 All. 349: 1932 C. C. 169.

—where a proceeding under s. 133 was started against a person on the ground that he by raising the level of his low land caused an overflow of surplus rain water into other lands, held that s. 133 was not applicable to the case. 1933 Cal. 150: 1933 Cr. C. 227.

S. 135.

—even after the Magistrate has decided on enquiry under s. 139 A, that there is no evidence in support of the denial of the existence of the public way, it is still open to the party to elect to have the matter tried by the jury under s. 135. 56 C. L. J. 249

S. 139 A

—the Magistrate must exercise his discretion under s. 139-A judicially. Where the M applied the wrong test to the evidence, the proper course was to stay . . . ght
was adjudicated upon by . . . 66.

I. R. 1932 All 443. 1932 Cr

—where the M find . . . ved
and there is reliable evidence . . . ould
stay the proceeding 1932 Oudh 120 I. R. 1932 Oudh 204: 136
1 C. 839 33 Cr L. J. 384, 1932 Oudh 118: I. R. 1932 Oudh. 380: 139
I. C. 737. 1932 Cr C. 191

—but where there is no reliable evidence in support of the denial of the existence of public right, the fact that a civil suit has been subsequently instituted is no bar to his continuing the proceedings under s. 138 56 C L J. 249

S. 144,

—In a criminal trial it was for the Court to determine the question of guilt of the accused upon evidence before it and the judgments in the civil litigation even though *inter partes* containing the finding that the possession was with the accused, were not final. 59 C. 136. 33 Cr. L. J. 441: I. R. 1932 Cal. 275: 1932 Cal. 293: 137 I. C. 163: 1932 Cr. C. 262.

—the authority of a M under s. 144 should be exercised in defence of rights rather than in their suppression. The proprietor of an old hat in Bengal has no monopoly or privilege which is entitled to protection and no immunity from competition and no order should be passed preventing the starting of a new hat. 1933 Cal. 348: 142 I. C. 319: I. R. 1933 Cal. 262: 34 Cr L. J. 334.

—in passing an order under this sec. the M should not go beyond the necessities of the case. 1933 Pat 185: 1933 Cr. C. 516.

—all injunctions should be clear and definite. Where the order was ambiguous the party should not be prosecuted for disobeying such an indefinite order in the nature of perpetual injunction. 36 C. W. N. 248: 1932 Cal. 288: 33 Cr. L. J. 518: 137 I. C. 816: I. R. 1932 Cal. 383: 1932 Cr. C. 214.

—when a magistrate is called upon to make an order under s. 144 he cannot delegate his functions to some other M. 1933 Cal. 348: I. R. 1933 Cal. 262: 1933 Cr. C. 420: 34 Cr. L. J. 334.

—where order under s. 144 not to join unlawful picketting etc. was passed and the accused was charged with disobedience of the above order under s. 183 I. P. C. by closing his own . . . that the

• functions
ries. An.
ll times is

prima facie unreasonable. 50 M. L. J. 595: I. R. 1932 Mad. 566:
138 I. C. 354: 33 Cr. L. J. 605: 1932 Cr. C. 280.

S. 144—*contd.*

—under s. 144 a M. can make a restrictive order preventing the opposite party from doing an act but he cannot make a mandatory order directing the opposite party to do some act. 1933 Cal. 724.

—the jurisdiction conferred by s. 144 (4) upon a Magistrate is neither appellate nor revisional. It is a special jurisdiction conferred by special provision of the statute. The omission to apply under this sec. does not bar a revision to the H. C. 1932 Mad. 720: I. R. 1932 Mad. 793: 139 I. C. 773: 33 Cr. L. J. 826: 63 M. L. J. 594

—when an order under s. 144 is passed against a person the proper procedure is to apply under sub-sec. 4 to the Dt. M., only in exceptional cases the H. C. may entertain a revision. 37 C. W. N. 962.
S. 145.

—the jurisdiction of the M. to take action under s. 145 Cr. P. C. arises from the fact that he has received certain information and is satisfied as to its truth. The jurisdiction does not depend on how he proceeds. Omission to follow certain direction in the Code does not affect jurisdiction. 1933 All. 264: 1933 Cr. C. 434: I. R. 1933 All. 125: 142 I. C. 537: 34 Cr. L. J. 414. F. B.

—symbolical possession delivered by Civil Court breaks the actual possession of the person dispossessed thereby, though what happened at the time of delivery may well be important on the question whether the former continued in possession. 37 C. W. N. 652: 1932 Cal. 424: 1933 Cr. C. 622.

—where one set of persons claims exclusive possession over the major portion of the land while the other set claims to be in joint possession along with them of the entire land, it is in principle no less a question of disputed actual possession than if each party claimed exclusive possession of the entire area and s. 145 is applicable to such a case. 1932 Pat. 366: 13 Pat. L. T. 609: 1932 Cr. C. 899, 4 C. W. N. 426, 1919 Pat. 479, 1 P. L. T. 594 *Diss. from*. 7 C. W. N. 118 *Dist.*

—where the opposite party appears to be in possession within two months of the proceedings but is forcibly dispossessed by the petitioner the possession of the former should not be disturbed. 37 C. W. N. 652: 1933 Cal. 424: 1933 Cr. C. 622.

—in proceedings under s. 145 the M. is bound to find who was in possession on the date of the preliminary order, otherwise the proceedings are without force in law. 1932 M. W. N. 72, 1931 M. W. N. 1317.

—omission of expressly to state the grounds of his satisfaction was not such an irregularity as would make it necessary to set his order aside. 1932 Sind. 145: 26 S. L. R. 353: 1932 Cr. C. 681, 1932 All. 681: 1932 Cr. C. 936: 1932 A. L. J. 865, 1932 All. 446: 1932 A. L. J. 503: 1932 Cr. C. 558.

—where the M. did not pass a preliminary order under s. 145 (1) and refused to hear more than three witnesses on each side, held that the order was vitiated. 1932 M. W. N. 320.

S. 145—*contd.*

—the inquiry under s. 145 (4) should relate to the question of actual possession and not to the question of right to possession 1932 Mad. 368 1932 Cr. C. 334 1932 M. W. N. 425 : I. R. 1932 Mad. 496 138 I. C. 68 : 33 Cr. L. J. 536

—master and servant, possession by one for another, claim under The same rule applies to trustee and temple pujari. 1932 M. W. N. 1079.

—the provision of sec. 171 Companies Act that when a winding up order has been made no suit or other legal proceeding

Cal 433 : 1933 Cr. C. 705.

—as it is extremely difficult to prove the exact amount spent in a semicriminal case such as one under s. 145, the Court may, in such a case very well use its discretion in awarding the amount which it considers reasonable. 1932 All. 25 : 1932 Cr. C.

the immovable
therefrom and to
R. 1933 Lah.

where the Magistrate ignores the order under Or. 21, R. 35
possession did not
interfere in revision.

on under s. 145 (4)
cannot delegate to a
Subordinate Magistrate the duty of taking such evidence. 1932
Mad. 368 : 1932 Cr. C. 334 : 138 I. C. 68 : 1932 M. W. N. 425 : I. R.
1932 Mad. 496.

S. 146.

possession it is a case
was in exclusive possession
under s. 146. 1932 All.

only if a M. is unable to
in possession. 1932 All.
132 All. 70.

—the M. may cancel a lease granted by a Receiver when fraud is practised on Court. 1932 M. W. N. 1154 : 140 I. C. 281 :
I. R. 1932 Mad. 834 : 33 Cr. L. J. 956.

—any act done by the receiver appointed under s. 146 cannot affect the rights of the party found by the Court to be entitled to the possession of the property. Thus a settlement made by the

S. 145—*contd.*

receiver in respect of the holding of a raiyat is not binding. 12 Pat. 261. 14 P. L. T. 113.

S. 147.

—the right to perform *pūja* in a temple can form the subject matter of a proceeding under s. 147. 1932 M. W. N. 1079.

—it cannot be said that in every case the final order of the M. should be in exactly the same words as are used in the section. An order directing the removal of an obstruction, to the right of the complainant, though not exactly in terms of sec. 147 (2), was valid. 1933 Cal. 752 : 1933 Cr. C. 1254.

S. 148.

—under the guise of calling for report depute a subordinate M. for making taking of evidence which the parties .. 8 : 1932 Cr. C. 334 : 138 I. C. 68 : 1932 496 : 33 Cr. L. J. 536.

—when the M. passes an order after considering an application for costs on merits, the order is valid even though it is passed *ex parte*. An order as to costs passed two days after the decision in the case is a valid order. 1933 All. 264 : I. R. 1933 All. 125 : 142 I. C. 537 : 34 Cr. L. J. 414 : 1933 Cr. C. 434 : 1933 A. L. J. 188 F. B.

—the H. C. in revision has power to make an order for the payment of the costs of proceedings under s. 145 as an order for costs under s. 148 (3) is "incidental" to the order for possession within the sec. 423 (1) (d). 1933 Rang. 288 F. B.

S. 154.

—the first information report is not a substantive piece of evidence, it can be used merely by way of corroboration or contradiction and not any further. 1932 Oudh 99 : 137 I. C. 79 : I. R. 1932 Oudh. 195 : 33 Cr. L. J. 381 : 1932 Cr. C. 162, (23 A. L. J. 14, 1930 Mad. 632, 1928 Lah. 507) *Ref.*

S. 155.

—the District M. acting under s. 155 (2) Cr. P. C. can order investigation into a case under s. 294-A, I. P. C. 1932 Lah. 581 : I. R. 1932 Lah. 534 : 138 I. C. 751 : 38 Cr. L. J. 678. 1932 Cr. C. 809.

—irregularities in preliminary investigation do not affect the validity of the proceedings 1933 Sind 188 : 1933 Cr. C. 569 : 141 I. C. 879 : 34 Cr. L. J. 256 : I. R. 1933 Sind 79.

S. 156.

—the powers given to the police under s. 156 are not affected when an order to investigate under s. 202 is made and though it is not open to the M. to direct the police to make a charge in the same case it is open to the police to do so if they think proper, and even if such a charge sheet is irregular it is cured by s. 329. 1932 Lah. 579 : I. R. 1932 Lah. 561 : 139 I. C. 139 : 33 Cr. L. J. 737 : 1932 Cr. C. 807 : 1933 Sind 136 : 27 S. L. R. 67 : 1933 Cr. C. 334, 1932 Pat. 547, *Approved* (1928 Cal. 24, 1929 Bom. 72) *Not fol.*

S. 162—*contd.*

of ss 162 and 172 Cr. P. C. 1932 Lah. 103; I R 1932 Lah. 81: 135 I. C. 209; 33 Cr. L. J. 397: 1932 Cr. C. 123.

—whether the record of a statement be proved and used under s. 162 or used under s. 172 (2) without being proved, it is necessary for the Court to avoid using it otherwise than as provided by law. 14 Pat. L. T. 543.

—the procedure under s. 162 applies not only where it is desired to contradict the evidence of the witnesses by the statements but also where the witness agrees with the statement. 1933 All. 536: 1933 Cr. C. 870.

—where in an investigation by Superintendent of Police under s. 51 (6), Bombay District Police Act he recorded certain statements and proceedings under s. 107 Cr. P. C. were started, held that assuming that the applicants for the copies of the statements were "accused" within the meaning of s. 162, Chap. VIII contained no provision for a preliminary investigation and s. 162 did not apply. 1932 Bom. 196; 34 Bom. L. R. 258; I R. 1932 Bom. 521: 139 I. C. 628: 33 Cr. L. J. 797.

—the expression "statement made by any person" in sub-sec. (1) of the sec. includes a statement made by a person accused of the offence under investigation. 55 M. 903: 1932 Mad. 391: 1932 Cr. C. 355; I. R. 1932 Mad. 338; 33 Cr. L. J. 418: 137 I. C. 9: 1932 Cr. C. 355 F. B.

—when a statement has not been made in the course of investigating the offence in respect of which the trial is held neither the main part of s. 162 nor the proviso has any application 1932 M. W. N. 1074: 63 M. L. J. 794: 36 L. W. 759.

—procedure to be adopted by the cross-examiner when the witness admits the previous statements and when not. 1932 Lah. 103: 135 I. C. 209: I. R. 1932 Lah. 81: 33 Cr. L. J. 97: 1932 Cr. C. 123.

—statement made by a witness to the police in the course of an investigation of a case cannot be used to corroborate the witness's evidence, it must be proved and used in accordance with s. 145 Evi. Act. 1932 M. W. N., 1932 Oudh 247: I. R. 1932 Oudh 291: 138 I. C. 159: 33 Cr. L. J. 566: 1932 Cr. C. 526, 138 I. C. 528; I. R. 1932 Lah. 509: 33 Cr. L. J. 637: 33 P. L. R. 208.

—oral statements made to the police cannot be admitted except for contradicting witnesses on behalf of the defence. 1933 Bom. 266 & 35 Bom. L. R. 474.

—a retracted confession must be most carefully scrutinised and the Court should very cautiously rely on them. 1933 Bom. 230, 35 Bom. L. R. 371: 1933 Cr. C. 653.

—a list of stolen property made and handed over to the police in the course of an investigation cannot be admitted in evidence. 1932 Lah. 488; 1932 Cr. C. 626, 1929 Cal. 448.

S. 164

—this sec. does not exclude confessions otherwise admissible. It merely deals with the manner in which confessions made during a police investigation shall be recorded. 55 M 717: 1932 Mad 500. L R 1932 Mad. 552. 138 I C 240. 1932 Cr C. 504. 33 Cr. L. J. 586.

—the mere fact that the M. before whom confession was made was only a M. of third class of an Indian State does not make it inadmissible in evidence. The officer before whom the confession is made is a M. within s. 26 Evl. Act and Magistrates of Foreign nationality are not excluded from the scope of Cr. P. C. 1933 All. 286: 1933 Cr. C. 488, (1929 Mad. 487, 22 B. 235) *fol.*

—it is not necessary that the recording M. must be some one other than a M. who has begun an inquiry into the guilt of persons alleged to have been confederates of the confessing prisoner. 1932 Lah. 103. 33 P. L. R. 891. 135 I. C. 209: 33 Cr. L. J. 97: I. R. 1932 Lah. 81, 37 C. 467 *Rel. on.*

—confession by absconder after recording of evidence was held to be duly recorded as having been in the course of an investigation. 1932 Lah. 103: 1932 Cr. C. 123. 33 P. L. R. 891: 33 Cr. L. J. 97. 135 I. C. 209. I. R. 1932 Lah. 81, (110 I. C. 329, 37 C. 467) *Rel. on.*

... outside British India all that is anything in the substantive or 367: I. R. 1932 Lah. 323. 137 J. 460.

... recorded under s. 164 the as freely made. The burdened is inadmissible lies on the 10: 26 S. L. R. 302. 35 Bom. 457 F. B.

... to strike the Judge is, why: All. 31. 143 I. C. 67: I. R. J. 1125.

—every question asked and answer given must be recorded in full but the M. is not bound to put a series of questions and record the answers. The confessor must be left to narrate his story as a whole without any unnecessary interference. 1932 Lah. 180. 137 I. C. 95: I. R. 1932 Lah. 294: 33 Cr. L. J. 414.

—a confession is inadmissible if the M. does not question the person making it as to whether he was making it voluntarily. 33 P. L. R. 415.

—where the question required to be put to the accused is not I to be made is not made the 542: 1932 Bom. 553: 34 Bom. 785, 1933 M. W. N. 723.

—where the M. recorded a memorandum at the commencement of each confession but did not record the memorandum at the foot as prescribed by the second portion of s. 164 (3), the confessions were inadmissible. 33 P. L. R. 917: 139 I. C. 694: 33 Cr. L. J. 8

S. 164—*contd.*

I. R. 1932 Lah. 610, *contra*. 1932 M. W. N. 714, 35 Bom. L. R. 234 : 1933 Bom. 145 : 1933 Cr. C. 457 F. B.

—it is the duty of the M. to satisfy himself that the confession is in fact voluntary and to record the questions and answers which point to such a conclusion. 54 A. 350 : 1932 All. 228 : 1932 A. L. J. 162 : I. R. 1932 All. 102 : 135 I. C. 838 : 33 Cr. L. J. 201.

—in the absence of anything to the contrary it may be assumed that the warning was given by the M. at the appropriate time 1933 Bom. 145 : 1933 Cr. C. 457 : 35 Bom. L. R. 234 F. B.

—a confession made by an accused during remand proceedings which however, is not recorded in accordance with the provisions of s. 164 should be excluded from consideration. 33 P. L. R. 25 : 137 I. C. 57 : 33 Cr. L. J. 377 : I. R. 1932 Lah. 281.

—a confession made voluntarily is not inadmissible merely because the accused was not warned by the M. that he was not bound to make such confession. Sec. 164 Cr. P. C. is in conflict with sec. 29 of the Evl. Act but on a question of the admissibility of a particular piece of evidence s. 29 of the Evl. Act will prevail. 55 M. 711 : 62 M. L. J. 559 : 1932 M. W. N. 449 : 33 Cr. L. J. 526 : I. R. 1932 Mad. 439 : 137 I. C. 863 : 1932 Cr. C. 412 : 1932 Mad. 431, 31 A. 592 F. B. *Ref.*, 1933 Cr. C. 530 : 1933 Sind. 166.

—Magistrates have power to exclude the police or any others from court during examination under s. 164. 1932 M. W. N. 625.

—statements recorded under s. 164 are public documents and the public officer in whose custody those documents are, is bound to issue copies thereof. 1932 All. 327 : I. R. 1932 All. 554 : 139 I. C. 330 : 1932 Cr. C. 306 : 33 Cr. L. J. 752.

—in recording statements under s. 164 Cr. P. C., a M. is empowered to administer to the deponent an oath or solemn affirmation and the statement so recorded can form the subject of perjury. 1933 Lah. 321 : I. R. 1933 Lah. 303 : 142 I. C. 776 : 34 Cr. L. J. 468.

—an accused is entitled to inspect statements of prosecution witnesses recorded under s. 164. The prosecution may use the statements for the purpose of corroboration and the defence for the purpose of contradicting such witnesses. 1932 All. 327 : 139 I. C. 330 : I. R. 1932 All. 554 : 33 Cr. L. J. 752 : 1932 Cr. C. 306.

—the word "record" means to write down. Where the accused gave a statement written and signed by him to the police and when taken before a M. for recording his confession he handed over the same written document to the M. saying that it contained his confession, such confession was inadmissible. 1933 All. 356 : 1933 Cr. C. 629 : 1933 A. L. J. 479.

—the memorandum provided by s. 164 (3) must be in the handwriting of the M. himself. 1933 Bom. 145 : 35 Bom. L. R. 234 : 1933 Cr. C. 457 F. B.

—when a memorandum is made the mere fact that it was attached to the English memorandum of the original vernacular confession, the English memorandum also forming part of this

S. 164—contd.

record, is sufficient compliance with the provisions of law. 1933 Bom. 145 : 35 Bom. L. R. 234 1933 Cr. C 457 F. B.

—ordinarily the written memorandum of the M is not admissible though the M under the provisions of s. 159 Evi Act can refresh his memory when under examination by referring to the memorandum 14 Lah 290 F. B

S. 165.

—non-compliance with the provisions of the sec., effect of, dissentient opinions. 1932 Pat. 66, 13 Pat. L. T. 62 : 33 Cr. L. J. 233 1932 Cr. C 99 I R. 1932 Pat. 60-10 Pat 821. It is an irregularity but does not vitiate the proceedings. 1932 Oudh : I. R. 1932 Oudh 242 137 I C 621 : 1932 Cr. C 590.

—when a company is suspected to have committed offence under ss. 294 and 420 I P. C. the police will be justified to seize all its account books but the officers of the company should be given access to look into such books for their business 1932 Cr. C. 809 : 1932 Lah 581 : 135 I. C. 751 I R. 1932 Lah. 534. 33 Cr. L. J. 678 : 33 P. L. R. 824.

S. 166.

—omission on the part of the recording Magistrate to state that the accused was before the Magistrate is not an illegality if there is no indication before the trying Court that the accused was unaware of the fact. 1932 Lah. 103 : I. R. 1932 Lah. 81 : 135 I. C. 209 : 33 Cr. L. J. 97 : 1932 Cr. C. 123.

S. 169.

—there is no need for an investigating officer to take any steps under s. 169 after the accused have appeared before the M. This sec. is only applicable so long the case is at the stage of the investigation by the police. 1933 All. 582 : 1933 Cr. C. 926,

S. 172.

—the contents of the diary are not at the disposal of the defence and cannot be used except strictly in accordance with ss. 162 and 172 Cr P. C. The accused cannot insist upon a police witness to refer to his diary. 1932 Lah 103 : 135 I. C. 209 : I. R. 1932 Lah. 81 : 1932 Cr. C. 123

to the counsel for the
inspection of the diaries
142 I. C. 854 : 34 Cr. L. J.

402

—the Court should avoid using the statement to police otherwise than as provided by law. 12 Pat. L. T. 543.

S. 173.

—when a challan case has been put in before a Magistrate under this sec. the District Magistrate cannot direct the police to make further enquiry and as a result thereof to withdraw the case nor the police can institute further investigation with a view

S. 173—*contd.*

find evidence in favour of the accused. 1932 Lah. 611 : 33 P. L. R. 793 : 1932 Cr. C. 917 : 140 I. C. 25 : I. R. 1932 Lah. 675.

—the police must be allowed to form their own opinion of a case and submit report and the Magistrate cannot interfere. I. R. 1932 Mad. 733 : 63 M. L. J. 679 : 33 Cr. L. J. 785 : 1932 M. W. N. 548 : 139 I. C. 500 : 1932 Mad. 673 : 1932 Cr. C. 831.

—it cannot be said that a M. having once disposed of a police report under s. 173 Cr. P. C. has no power to revise his order and call for a charge-sheet. He can reopen the case under s. 190 (1). 12 Pat. 234 : 14 Pat. L. T. 162.

—as soon as the investigation is completed the investigating officer must send a report to the Magistrate. He cannot delay his final report on the charge of dacoity until the proceedings under s. 202 before the M. had terminated. 1933 All. 582 : 1933 Cr. C. 926.

S. 177.

—when the offence is committed within the local limits of the jurisdiction of the Sessions

Court at Calcutta should cor

Howrah. 59 C. 856 : 33 Cr. I

Cal. 479 : 1932 Cal. 487 : 1932 Cr. C. 479 : 36 C. W. N. 104.

—jurisdiction of third Presidency M. to try the case when the offence is committed by the crews on high seas. 60 C. 44 : 1933 Cal. 145 : 1933 Cr. C. 222.

S. 179.

—s. 188, overrides s. 179 where s. 188 is applicable. 59 C. 1065 : 1932 Cal. 465 : 1932 Cr. C. 455 : 33 Cr. L. J. 267 : 136 I. C. 137 : I. R. 1932 Cal. 269.

—complaint of an offence under s. 409 I. P. C. should be made in Criminal Court within whose jurisdiction the accused was residing. 1932 All. 367 : 1932 Cr. C. 403 : I. R. 1932 All. 531 : 139 I. C. 159 : 33 Cr. L. J. 711.

S. 181.

—the combined effect of s. 181 (2) and s. 222 (2) is that where the offence of criminal breach of trust is committed at several places within the jurisdiction of several sub-divisional Magistrates any one of them can try the accused. 1932 All. 26 : 135 I. C. 228 : I. R. 1932 All. 52 : 33 Cr. L. J. 127 : 1932 Cr. C. 35.

S. 188.

—order under s. 144 served on an individual directing him to abstain from the construction of a building whether can be said to be "promulgated" within the meaning of the sec. 36 C. W. N. 792 : 139 I. C. 739 : I. R. 1932 Cal. 649 : 1932 Cr. C. 892 : 33 Cr. L. J. 829.

—s. 188 overrides s. 179 where it applies. 36 C. W. N. 456 : 136 I. C. 137 : 59 C. 1065 : 33 Cr. L. J. 267 : 1932 Cr. C. 455 : 1932 Cal. 465 : I. R. 1932 Cal. 185.

S. 195—contd.

tainable. 1932 All. 190 : 33 Cr. L. J. 948 : 1932 A. L. J. 155 : I. R. 1932 All. 633 : 140 I. C. 184 : 1932 Cr. C. 206.

—where the alleged offence has been committed by a party to a proceeding in a civil suit in respect of a document no criminal Court can take cognizance except on the written complaint of the said Civil Court under s. 195 (1). 1933 Cal. 480 : 1933 Cr. C. 794 : 34 Cr. L. J. 526 : I. R. 1933 Cal. 342 : 143 I. C. 15.

—where the M. takes cognizance of charge under s. 182 I. P. C. only and protest petition is filed by accused repeating false charge, in the absence of complaint in writing, committal and conviction of the accused under s. 211 I. P. C. were without jurisdiction. 1932 Pat. 152 : 11 Pat. 155 : I. R. 1932 Pat. 40 : 135 I. C. 520 : 33 Cr. L. J. 153 : 12 Pat. L. T. 905.

—the date when the Court takes cognizance of an offence under s. 193 I. P. C. is the crucial date for seeing whether s. 195 Cr. P. C. applies. Where an offence is committed under s. 193 I. P. C. in respect of proceedings in a Court of law which are contemplated but which in fact are never stated, in such a case s. 195 does not apply and the M. can take cognizance of it without any complaint from a Court. 56 B. 213 : 33 Cr. L. J. 386 : 137 I. C. 134 : 1932 Bom. 185 : 1932 Cr. C. 244 : I. R. 1932 B. 219.

—where the prosecution for perjury is at the instance of the appellate tribunal the fact that the trial judge felt himself able to accept the statements is a point to be taken into account. 1932 All. 674 : 1932 Cr. C. 862.

—where the complaint by private person was for an offence under s. 193 I. P. C. the necessity of a complaint under s. 476 cannot be dispensed with by the Court electing to try the accused for offences under ss. 467 and 109 I. P. C. 55 M. 343 : 136 I. C. 779 : 1932 Mad. 253 : 62 M. L. J. 735 : I. R. 1932 Mad. 315 : 33 C. L. J. 361.

—where a vakil's clerk was prosecuted under s. 471 for forging an endorsement to cover up his default in not filing the suit on promissory note in time, held that the facts alleged constituted an offence under s. 193 I. P. C. and the necessity of a complaint under s. 195 (1) (b) Cr. P. C. from the Court which dismissed the suit could not be dispensed with. 1933 M. W. N. 217 : 37 L. W. 54.

—the Court can take action under s. 476 only if the offence is one committed "in or in relation to a proceeding in Court." 1933 M. L. J. 310 : 1932 Cr. C. 276 : 728 : 139 I. C. 482 : 33 Cr. L. J.

—where the complaint is in respect of an antecedent forgery and production of a copy of such document in prior proceedings sanction under s. 195 (1) (c) is necessary. 1932 Sind 90 : 33 Cr. L. J. 452 : 1932 Cr. C. 530 : 137 I. C. 341 : I. R. 1932 Sind 77.

S. 195—*contd*

—the provisions of s. 477-A, I. P. C. are not covered by the provisions of sec. 195 (1) (c), Cr. P. C. 1932 Sind 53 : 1932 Cr. C. 194, 33 Cr. L. J. 328 1932 Sind 62 136 1 C 766.

—s. 195 (1) (c) does not apply when the document which is alleged to be forged is produced at the trial of the person alleged to have forged it, not having been produced in any independent proceeding. 56 B. 488 1932 Bom 545 : 1932 Cr. C. 777 : 34 Bom. L. R. 1090

—the Governor-in-Council of Assam or a member of his forest Departments to him, 59 C. 1233 : 85 : 138 I. C. 705 : I.

—for a prosecution on a charge of conspiracy under s. 193 read with s. 120-B, I. P. C. the previous sanction of the Magistrate is necessary. 1932 Cr. C. 881 : 1932 Cal. 850 : 33 Cr. L. J. 657 : 139 I. C. 89.

S. 196-A.

—no previous sanction of the Local Govt. is necessary in the case of a conspiracy to commit an offence under s. 50 of the U.P. Excise Act. 1932 All. 73 : 1932 Cr. C. 93 : 33 Cr. L. J. 373 : I. R. 1932 All. 270 : 137 I. C. 73.

—where the sanction of the Local Govt. was obtained subsequent to the institution of the case and fresh complaint having been made the M. proceeded to hold a new inquiry under chap. XVIII, there was nothing wrong. 12 Pat. 353 : 14 Pat. L. T. 281.

—where no objection is taken on the ground of s. 196-A subsequent to the institution of the case and fresh complaint having been made the M. proceeded to hold a new inquiry under chap. XVIII, there was nothing wrong. 12 Pat. 353 : 14 Pat. L. T. 281.

S. 197.

—this sec. does not require previous sanction for taking cognizance of a complaint regarding an offence described in s. 168 I. P. C. 1932 Nag. 133 : 1932 Cr. C. 669 : 140 I. C. 711.

—the meaning of "public duty" meaning of, 1932 3 : 1932 Mad. 214 : I. R. 1932 C. 156 : 33 Cr. L. J. 557.
time of commission of the offence of the sec. 1932 Sind

—the members of the District Board are public servants Oudh 308 : 1932 Cr. C. 848.
Magistrate is not a public servant 1933 M. W. N. 1031.
not a Local Government. 1932

S. 197—*contd.*

—there is no provision in this sec. that sanction should be addressed to any particular officer. The order of sanction is to be ordinarily conveyed to the authorities who are responsible for initiating prosecution in the locality in question. 1933 All. 543: 1933 Cr. C. 874.

S. 199

—where the father of a girl lodged a complaint under s. 498 I. P. C. alleging that the husband of the girl was ill and it was found that the husband was neither ill nor were there any circumstances justifying complaint by father, held that the complaint was in contravention of s. 199 Cr. P. C. and could not be entertained. 1930 Cal. 144: 142 I. C. 150: I. R. 1933 Cal. 241: 34 Cr. L. J. 290: 1930 Cr. C. 205.

—conviction under s. 498 I. P. C. without complaint by the husband cannot be sustained even though the husband had come forward and gave evidence. 1933 All. 626: 1933 A. L. J. 701: 1933 Cr. C. 1005, (5 A. 233, 27 M. 61, 29 C. 415) *Rel. on*, 20 C. 483, *not fol.*

S. 200.

—examination of the complainant in part is bad but it does not vitiate the proceeding. 37 C. W. N. 319.

S. 202.

—the powers given to the police under s. 156 are not affected when an order to investigate under s. 202 is made and it is open to the police to file charge-sheet. 1932 Lah. 579: I. R. 1932 Lah. 561: 139 I. C. 139: 1932 C. L. J. 807: 33 Cr. C. 737.

—apart from the provisions of s. 202 a Magistrate proceeding under Chap. VIII C. P. C. has the right to call for a report from the police before issuing a notice under s. 112. 1932 All. 670: 140 I. C. 336: I. R. 1932 All. 663: 1932 A. L. J. 880: 1932 Cr. C. 822.

—where a complaint was referred to a M. for inquiry and he examined the accused and heard argument and dismissed the complaint, held that though the examination of the accused was not illegal, hearing argument was illegal. 37 C. W. N. 709: 1933 Cal. 447: 37 C. L. J. 259.

S. 203.

—where the complainant has already been examined on oath under s. 200 the M. need not examine him again under s. 203. 1932 Sind 58: I. R. 1932 Sind 63: 136 I. C. 767: 1933 Cr. C. 199: 33 C. L. J. 330.

—a complainant need not be an eyewitness of everything in the complaint. 1931 M. W. N. 1316.

—it is contrary to the scheme of the Code to permit the opposite party to appear and argue that process should not issue. But when this prayer of the complaint is for the seizure of the opposite party's books and accounts, the latter may appear immediately and ask that such order be vacated. 36 C. W. N.

S. 203—contd.

674 : 1 R. 1932 Cal. 473 : 138 I. C. 639 : 33 Cr. L. J. 636 : 1932 Cr. R. C. 652 : 1932 Cal. 697

—a second complaint of an alleged offence is entertainable and it is not absolutely necessary to get the previous order of dismissal under s. 203 set aside. 33 P. L. R. 318 : 137 I. C. 520 : 1 R. 1932 Lah. 342 : 33 Cr. L. J. 493.

—when an order of acquittal is set aside and retrial is ordered in revision, the M. can retry the accused only for the offence he originally tried for. 1932 M. W. N. 1218 : 1 R. 1932 Mad. 798 : 139 I. C. 852 : 33 Cr. L. J. 825

—in dismissing a complaint the M. has the right to order the resumption of *status quo* so that the rights of the parties might be determined in Civil Court. 1933 Cal. 149 : 1933 Cr. R. C. 226.

—this Act does not apply to an application under the Merchant Shipping Act. Such an application cannot be dismissed under s. 203. 37 C. W. N. 1185 : 1933 Cal. 647 : 1933 Cr. C. 1057 : 58 C. L. J. 116.

S. 204.

—sec. 204 applies not merely when cognizance is taken on a complaint but also when cognizance is taken on a police report, submitted to him after an inquiry under s. 202 on the basis of a complaint. An order for submission of a charge-sheet may be executive or judicial order. An order passed by a Magistrate, empowered under s. 190 (b) when disposing of a police report under s. 173, for the submission of a charge-sheet is a judicial order under s. 204 and is in practice an order for issue of process. Charge-sheet is a form provided under Departmental rules of the Government under s. 173 (1) (a). 1932 Pat. 72 : 1 R. 1932 Pat. 129 : 136 I. C. 842 : 33 Cr. L. J. 349 : 12 Pat. L. T. 937 : 1932 Cr. C. 136.

—where one Magistrate directs the issue of warrant and in his absence another Magistrate signs the warrant, the warrant is valid and legal. 1932 Pat. 175 : 13 Pat. L. T. 167 : 1932 Cr. C. 351.

S. 206.

—an apparent connection of a case under s. 326 I. P. C. with a case under s. 302 is no ground for committing it to the Sessions Court when the offence is triable and can be sufficiently punished by a First Class M. or one exercising powers under s. 30 Cr. P. C. 1932 Lah. 168 : 136 I. C. 272 : 1 R. 1932 Lah. 224 : 33 Cr. L. J. 255.

S. 208.

—the M. is said to commence an inquiry only after the accused is brought before him; when the accused is absconding no inquiry can commence. 1932 Lah. 103 : 33 P. L. R. 891 : 1 R. 1931 Lah. 81 : 135 I. C. 209 : 33 Cr. L. J. 97 : 1932 Cr. C. 123.

S. 208—contd.

—where there is an application for the production of police diaries under s. 208, the M. is bound under that sec. to take steps for their production unless he thinks it unnecessary to do so. 1933 Cal. 184: 1933 Cr. C. 230.

—this sec. does not imply that the M. should record all evidences which the complainant or the prosecution may adduce. 1933 All. 690: 145 I. C. 481: 1930 Cr. C. 1202: 1933 A. L. J. 799

S. 209.

—where there is a charge and countercharge and the Magistrate finds it necessary to commit the accused in one of such cases to sessions it is at the discretion of the Magistrate to commit the counter-case also. 1932 M. W. N. 692.

S. 213.

—where the accused was convicted under sec. 20 of the Arms Act and the Sessions Judge set aside the conviction on the ground that the Magistrate had no jurisdiction to try the accused under that sec with the observation that the Magistrate might commit the accused to the Sessions Court and the Magistrate thereupon committed the accused without holding an inquiry under chap. VIII, the order of commitment was illegal. 36 C. W. N. 926: 1932 Cal. 653: 139 I. C. 470: I. R. 1932 Cal. 628: 33 Cr. L. J. 770: 1932 Cr. C. 636.

—the Court is entitled to select such evidence as it considers important and sufficient to prove the point for consideration. 1933 All. 690: 145 I. C. 481: 1933 Cr. C. 1202.

S. 215

—It is undesirable that a case which can be adequately dealt with by a M. himself should be committed to the sessions. 1932 Lah. 263, 1933 Cr. C. 328: 33 Cr. L. J. 680: I. R. 1932 Lah. 528: 138 I. C. 701: 33 P. L. R. 185.

—the H. C. has power to quash an illegal commitment at any stage. 14 Pat. L. T. 281: 12 Pat. 353.

without weighing the evidence is and cannot be inter-
39: I. R. 1933 Lah. 7:

S. 221.

—where the accused was charged under s. 292 I. P. C. for having published an obscene book the failure to specify the particular passages relied upon by the prosecution as obscene would not vitiate the trial as the prosecution maintained that the whole book was obscene. 36 C. W. N. 995: 56 C. L. J. 123: 139 I. C. 461: I. R. 1932 Cal. 625: 1932 Cr. C. 608: 1932 Cal. 631.

S. 233—contd.

knowing it to be false. 37 C. W. N. 514: 142 I. C. 335: 35 Bom. L. R. 507: 1933 Cr. C. 442: 57 C. L. J. 177: I. R. 1933 P. C. 65: 1933 P. C. 124: 1933 M. W. N. 409: 1933 Cr. C. 442 P. C.

—any defect or omission in framing the charge would not be fatal unless it has occasioned a failure of justice. 33 Cr. L. J. 373: 1932 Cr. C. 93: I. R. 1932 All. 270: 137 I. C. 73.

S. 234.

—the trial of two or more charges of criminal breach of trust cannot legally be joined with two or more charges of falsification of accounts. 36 C. W. N. 542: 1932 Cal. 486: 55 C. L. J. 111: 33 Cr. L. J. 265: I. R. 1932 Cal. 184: 136 I. C. 136, 1932 Sind 64: I. R. 1932 Sind 87: 33 Cr. L. J. 650: 1932 Cr. C. 284.

—offences under ss. 380 and 457 I. P. C. are not offences of the same kind within the meaning of s. 234. 33 Cr. L. J. 619: I. R. 1932 Bom. 383: 138 I. C. 520: 1932 Cr. C. 389: 34 Bom. L. R. 590.

—where a person was charged and convicted under s. 477-A-I. P. C. for having made false entries in ten pay-sheets between March 1923 and February 1929 entries in each pay-sheet was distinct violation of sec. 234 320: 137 I. C. 179: I. R. 1932

—offences under ss. 393 and 394 I. P. C. may be jointly tried. 34 Cr. L. J. 402: I. R. 1933 Lah. 275: 142 I. C. 820.

—the legality of joint trials depends on the accusation and not on the result of the trial provided the accusation is real 1933 M. W. N. 528, (41 C. 153, 49 M. 74) *fol.*

S. 235.

—if both sections 235 and 236 are in terms applicable to a case there is nothing prohibiting their conjoint operation. 54 A. 337: 1932 All. 25: 1932 Cr. C. 34: 135 I. C. 225: 33 Cr. L. J. 122: I. R. 1932 All. 49: 1932 A. L. J. 113.

—to determine whether there was a series of acts forming part of the same transaction the most important points to be considered are whether there was a common purpose and design and continuity of action. Where black-mailing is the common purpose, two exactions on different dates may be jointly tried. 56 C. L. J. 73.

—charges of causing hurt and wrongful confinement, and forgery to screen these offences are part of the same transaction. 56 B. 488: 1932 Bom. 545: 1932 Cr. C. 777: 34 Bom. L. R. 1090.

—a mere common purpose does not constitute same transaction and cannot make two distinct offences one under s. 380 and other under s. 457 I. P. C. part of the same transaction. 1932 Bom. 227: 33 Cr. L. J. 619: I. R. 1932 Bom. 383: 138 I. C. 520: 34 Bom. L. R. 590.

S 236.

—the offence of abetment of forgery is quite different from the offence of using as genuine a forged document. 55 C. L. J. 336 : 1932 Cal 545 1932 Cr. C. 545 140 I. C. 544.

—if both ss. 235 and 236 are in terms applicable to a case there is nothing prohibiting their conjoint operation. 54 A. 337 : 33 Cr. L. J. 122 I. R. 1932 All. 49 : 135 I. C. 225 : 1932 Cr. C. 34 : 1932 A. L. J. 113 1932 All. 25

S 237

I. P. C.

is no

1. 297 :

N. 816

fol

—where several accused were charged under sec. 302 read with s. 149 I. P. C. but the jury found them guilty of murder substantially under s. 302 and the judge accepted the verdict and convicted them under that sec. the conviction was not improper. 1932 Pat. 302 : 1932 Cr. C. 774 13 Pat. L. T. 440.

—an accused may be convicted under s. 411 I. P. C. though he was charged only under s. 457 I. P. C. 1932 Nag. 173 : 140 I. C. 431 1932 Cr. C. 908.

an offence under s. 366 I.

offence under s. 376 I. P. C.

has been made. 1932 All.

—there is no general proposition that where an accused is charged for only substantive offence, a conviction for abetment thereof is illegal. This sec. may be invoked to support the legality of the conviction. 36 C. W. N. 595 59 C. 1192 : 33 Cr. L. J. 720 : 139 I. C. 242 I. R. 1932 Cal. 584 : 1932 Cal. 455 : 1932 Cr. C. 335.

S 239.

—joint trial of offences under ss. 366 and 368, defect may be cured by fresh charge. 1932 Lah. 203 : I. R. 1932 Lah. 149 : 135 I. C. 677 : 33 P. L. R. 485 : 1932 Cr. C. 247 : 33 Cr. L. J. 190.

—a joint trial of different sets of persons under ss. 401 and 413 I. P. C. is illegal. 1932 Lah. 486 : I. R. 1932 Lah. 488 : 133 I. C. 424 : 33 Cr. L. J. 584 : 1932 Cr. C. 624.

—joint trial of two persons for the misappropriation of various items of money which were independent transactions carried out at 779.

offence under s. 506

possession of some

ss. 117 and 120. B

the Factories Act are

C. 1932 Pat. 188 :

4 : I. R. 1932 Pat.

S. 239—*contd.*

—a precise definition of the expression "the same transaction" cannot be formulated and each case must depend on its own facts. 35 Bom. L. R. 474 : 1933 Bom. 266.

—the phrase "possession of which has been transferred by one offence" in cl. (f) refers to the original theft of certain property. 1932 Bom. 201 : I. R. 1932 Bom. 231 : 34 Bom. L. R. 301 : 137 I. C. 146 : 33 Cr. L. J. 394 : 1932 Cr. C. 305, 6 Pat. 583 Ref.

—when the first four accused were charged with kidnapping and abduction, the fifth for abduction only and the sixth was jointly tried with the others for an offence under s. 368 I. P. O., the joint trial was illegal. 1933 Cal. 499, 144 I. C. 93.

S. 243

—where the accused's plea of guilty, was not recorded in accordance with s. 243 and the accused also denied the plea the conviction was bad. 36 C. W. N. 132.

—the recording of one admission for a number of accused is bad. 1932 Sind 211 : 140 I. C. 697. 26 S. L. R. 345 : 1932 Cr. C. 902.

S. 247

—absence of the accused does not affect this application of the section. 1932 Mad. 563 : 1932 Cr. C. 662. 138 I. C. 288 : 33 Cr. L. J. 579 : I. R. 1932 Mad. 546.

—if the complainant dies the Magistrate may in a proper case allow the complaint to be continued by a proper and fit complainant. 1932 Nag. 72 : I. R. 1932 Nag. 50 : 28 N. L. R. 49 : 137 I. C. 91 : 33 Cr. L. J. 407.

—discharge of the accused for want of proper complaint does not amount to acquittal under s. 247 and the second trial on proper complaint is barred. 36 C. W. N. 1038 : 1932 Cal. 871 : 1932 Cr. C. 893, 32 Cr. L. J. 27 Dist.

S. 250.

—a man is justified in saying to the police "I have my
 ... direct your enquiry against
 ... tted against me". But if he
 ... formation to the police that
 ... to connect B with the offence
 ... is both false and vexatious
 ... criminal prosecution against
 ... 77 : I. R. 1932 Bom. 221 : 137
 ... C. 236.

—this sec. does not apply to a case instituted on a police report or on information given by a police officer. 1932 Sind. 156 : 26 S. L. R. 299 : 33 Cr. L. J. 644 : 138 I. C. 535 : 1932 Cr. C. 692.

—in an appeal from an order awarding compensation to the accused notice to the accused is not necessary but in most cases it is desirable that notice to him should be given. 34 Bom. L. R. 289 : 1932 Bom. 177 : 1932 Cr. C. 236 : I. R. 1932 Bom. 221 : 137 I. C. 129 : 33 Cr. L. J. 392.

S. 250—contd.

—compensation money is recoverable as if it were a fine and the methods of recovering a fine are provided by s. 386, 1932 Pat. 301 : 33 Cr L. J. 958 I. R. 1932 Pat. 290 13 Pat. L. T. 536 : 140 L. C. 72 : 1932 Cr. C. 773 F. B.

S. 251.

—Chap. XXI of the Code applies to a Presidency Magistrate except where the former are
36 C. W. N. 791 55 C. L.
5 1932 Cr. C. 889 1932 Cal.

S. 253

—there is no distinction between orders of discharge under s. 253 and such orders passed under s. 209. An order of discharge cannot be set aside in revision except on such grounds as would justify the setting aside of an order of acquittal in appeal. 1933 Bom 158 : 35 Bom L. R. 245. 1933 Cr. C. 470.

S. 254.

—where in a trial as a warrant case a summons case is disclosed procedure as summons case may be adopted and no charge need be framed 1931 M. W. N. 1319.

—where the committing Magistrate is competent to dispose of the case an unnecessary committal is an error of law which would justify the quashing of the commitment order. 1932 Lah 263 I. R. 1932 Lah. 528 138 I. C. 701 33 Cr. L. J. 680 1932 Cr. C. 328.

—under this sec it is not within the discretion of a Magistrate whether he should frame a charge in writing or not. The sec. is mandatory and it applies to a Presidency Magistrate also. 36 C. W. N. 791 1932 Cal. 865 1932 Cr. C. 889. 139 I. C. 755. 33 Cr. L. J. 828 I. R. 1932 Cal 651. 55 C. L. J. 448

S. 256

—the failure of the Court to ask the accused whether they
proceedings. 1932 Mad 559. I. R.
1932 Cr. C. 589 : 139 I. C. 203.

—where the accused's pleader desires to cross-examine witness before the complainant the M. should accede to the request. 1933 Cal 189 : 142 I. C. 479 I. R. 1933 Cal 274 : 34 Cr. L. J. 347 : 37 C. W. N. 288. 34 Cr. L. J. 347.

—the provisions of sec 256 Cr. P. C. are merely directory and any irregularity in procedure can be cured by s. 537 Cr. P. C. 1932 Oudh. 242 137 I. C. 684 I. R. 1932 Oudh 257 33 Cr. L. J. 506 : 1932 Cr. C. 405.

—s. 256 is not applicable to a person called upon to give security for good behaviour but he has a qualified right given by sec. 257, 140 I. C. 170 : I. R. 1932 Sind. 182

S. 255—contd.

—if the accused has already prepared a lengthy written statement he should be allowed to file it in the Court of Sessions as that would save much time, though it would not relieve the Court of the necessity of questioning him generally on the case under ss 342 and 364. 1933 All. 690 : 145 I. C. 481 : 1933 Cr. C. 1202 : 1933 A. L. J. 799.

S 257.

—ordinarily in a warrant case it is the Govt. that must pay the expenses of the witnesses both for the Crown and the defence. 1932 Lah. 481 : 139 I. C. 508 : 33 Cr. L. J. 761 : I. R. 1932 Lah. 581. 1932 Cr. C. 619.

—where in a warrant case charges were framed after the examination of some of the witnesses and the case was adjourned to a particular date on which the M. thinking that the proposed compromise might have materialized dealt with the case under s. 258 Cr. P. C. and recorded an acquittal, held that the M. had no right to do so as charges had already been framed. 143 I. C. 83 : 1933 Cal. 358 : 1933 Cr. C. 494. I. R. 1933 Cal. 332.

S. 259.

—the procedure of directing the accused to be acquitted without writing a judgment is irregular though it may be cured by s. 537. 1933 All. 660 : 1933 A. L. J. 1244 : 145 I. C. 664 : 1933 Cr. C. 1143, 14 A. 242 F. B. Expl. (1930 Pat. 148, 23 C. 502, 1922 Mad 502) Ref.

S 260.

—summary trial though legal is most inappropriate in cases in which general servants are concerned as accused persons. 1932 Lah. 188 : 1932 Cr. C. 181 : I. R. 1932 Lah. 92. 135 I. C. 220 : 33 Cr L J. 108.

—a M. has no jurisdiction to try an offence under s. 342 summarily and he cannot create a jurisdiction by charging for the lesser offence under s 341. 1932 M. W. N. 478.

S. 262.

—summary trial by Honorary Magistrate on a charge under s. 379 I. P. C., reference to District Magistrate under s. 439; sentence passed by the Dt. M. without taking evidence is bad. 1932 All. 507 : 1932 Cr. C. 595 : 137 I. C. 208 : 1932 All. 320 : 33 Cr. L. J. 472.

S. 264.

—in discharging an accused of an offence under s. 152 I. P. C. the M. may frame a charge under s. 160. 1933 Sind. 173 : 1933 Cr. C. 537.

—where the case is hotly contested it is questionable whether a M. should try it summarily. 1931 Mad. 233 : 1931 M. W. N. 118 : 32 Cr. L. J. 689 : I. R. 1931 Mad. 510.

S 270

—it is not proper that the case and countercase arising out of the same incident and committed to the Sessions should be tried at one and the same time. 1932 M. W. N. 693.

S 274.

—if there is no complaint by the accused as regards the insufficiency of jurors the prosecution court can take objection towards the end of the trial 1932 Cal. 750 : 1932 Cr. C. 744 : 14 I. C. 18 39 Cr. L. J. 869 : I. R. 1932 Cal. 683.

S 275.

—no privileges are given to Europeans other than European British subjects and such Europeans can be tried by Indian Courts. 1933 Nag. 136 1933 Cr. C. 610 : I. R. 1933 Nag. 153 : 143 I. C. 17.

S. 276

—persons within the precincts of the court building either because they have been summoned for other cases or by mere chance are persons "present". They need not be within the four walls of the room. 59 C. 1123 : 55 C. L. J. 132 : 33 Cr. L. J. 694 : I. R. 1932 Cal. 517 36 C. W. N. 377 : 1932 Cr. C. 554 : 1932 Cal. 536

—where special jurors to the number of eighteen were summoned but only five were present, the court could supplement the five special jurors who were available and were chosen by lot and one special juror who happened to be present with three persons who were jurors awaiting in another court but were not on the special jury list. 60 C. 725 : 1933 Cal. 638 : 1933 Cr. C. 1037.

S. 288.

—deposition taken before the committing M. can form the basis of judgment when the Court sees special reasons to believe the statement 1933 Rang. 57 : 11 Rang. 4 : 142 I. C. 87 : 34 Cr. L. J. 286 : I. R. 1933 Rang. 29

S. 290

—where there are more than one accused, their counsel shall all be heard after the conclusion of the whole of the defence evidence, but the irregular procedure does not vitiate the trial unless the accused are prejudiced 1932 Lah. 103 : 33 Cr. L. J. 97 : I. R. 1932 Lah. 81 : 135 I. C. 209 : 1932 Cr. C. 123.

S. 297.

—where the charge to the jury ran as follows:—"ss. 419, 467 and 120-B and other connected ss. 415, 416, 463, 464 and 120-A I.P.C. read and explained to the jury" and the contention was that the charge did not disclose how the secs. were actually explained, held that as none of the secs. presented any difficulty the explanation was sufficient. 1932 Cal. 786 : 1932 Cr. C. 829 : 140 I. C. 723.

—a direction in a charge in a case under s. 304 I. P. C. to the effect that if the accused party were held to be in possession then they were not guilty of any offence even though there was a force fight resulting in death of some of the complainant's party, is bad in law. 1933 Cal. 242 : 1933 Cr. C. 321.

—it is not correct to lay down that when a person attempts to enforce a claim to property which he cannot substantiate, thereby

S. 297—*contd.*

he creates the position that possession is with another, and if the language of a charge is of that nature it is bad for misdirection. *Above case.*

—a judge is competent to express his opinion to the jury provided he makes it clear that his opinion on the facts is not binding on them. 1933 Cal. 190: I. R. 1933 Cal. 312: 142 I. C. 653: 34 Cr. L. J. 430: 1933 Cr. C. 236

—where there is no specific defence specific reference to the defence case need not be made in the charge. It is sufficient if the judge draws the attention of the jury to the discrepancies in the prosecution evidence and the criticisms advanced by the defence. 59 C. 11236. 36 C. W. N. 377: 55 C. L. J. 132: 1932 Cr. C. 564: 1932 Cal. 536: 33 Cr. L. J. 694: I. R. 1932 Cal. 517: 138 I. C. 756.

—if any defence is supported by evidence the Judge should

that the murder had been committed, there was misdirection vitiating the verdict of the jury. 37 C. W. N. 348.

—the jury should be told that the evidence of an accomplice requires corroboration and it is for the Judge to rule whether or not there is any corroborative evidence and the jury is to decide if they should accept it or not. The Judge's failure to direct the jury accordingly amounts to misdirection. 1932 Cal. 295: 137 I. C. 497: I. R. 1932 Cal. 336: 33 C. L. J. 477: 1932 C. C. 264, 1933 Pat. 96: 142 I. C. 809: I. R. 1933 Pat. 176: 34 Cr. L. J. 421: 13 Pat. L. T. 802.

—the Judge should give a strict warning as to the principles applicable to the evidence of the approver. 37 C. W. N. 290.

—though the Judge need not explain to the jury abstract principles of law he must explain those particular sections of the I. P. C. which apply to the particular cases. 37 C. W. N. 1131: 1933 Cal. 722

—it is for the Judge to decide for himself whether *prima facie* the confession of the accused appears to him to have been induced by threat or promise and whether it is admissible. It is also the duty of the Judge to point out to the jury that the fact that considers the confession admissible does not necessarily mean that it is also true. 1933 Cal. 187: 142 I. C. 639: I. R. 1933 Cal. 310: 34 Cr. L. J. 369.

—where the prosecution failed to summon certain witnesses named in the first information and the Judge told the Jury that

S. 297—*contd.*

—emphasis should not be given on legal presumption of veracity. Where the Judge warned the Jury saying: "you will remember that there is a legal maxim that a witness who comes to court and deposes on oath should be believed until there is good reason to disbelieve him," there was misdirection though not requiring retrial. 59 C. 1361; 1932 Cal. 474; 1. R. 1932 Cal. 667; 139 I. Cr. 873; 33 Cr. L. J. 854; 55 C. L. J. 439; 1932 Cr. C. 464.

—in a trial under s. 366 the direction to the jury that the fact of previous intimacy of the accused with the girl is wholly immaterial is misdirection. 1933 Cal. 718.

—where the retracted confession of the co-accused is sought to be corroborated by the tainted evidence of another accomplice the Judge must emphasise in his charge on the necessity for untainted and independent corroboration. 36 C. W. N. 874; 1. R. 1932 Cal. 709; 140 I. C. 379.

—in a trial of several persons under ss. 368 and 103 where the contradictory statement of the girl seduced was not referred to and the cases of the accused were not separately dealt with there was misdirection vitiating the trial. 1933 Cal. 718.

—where the main points have been placed before the jury the fact that one or two minor details were not placed before them would not amount to such misdirection as would vitiate the trial. 57 C. L. J. 583.

—to charge the jury at great length may itself be an obstacle to their arriving at a correct decision as they are laymen. Only essentials should be clearly brought out and not overwhelmed and obscured by too great mass of detail. 1933 Pat. 496; 1933 Cr. C. 1061.

S. 298.

—where the jury first returned a confused verdict but the Judge having directed them afresh they returned a second verdict, the conviction based on that verdict was not bad. 85 C. 1335; 1932 Cal. 118; 135 I. C. 443; 1. R. 1932 Cal. 123; 33 Cr. L. J. 135; 1932 Cr. C. 103.

—where the jury brings in a verdict of guilty on a charge under s. 395 in respect of less than five persons, the Judge has no duty to satisfy itself that in coming to such a verdict there has been present in their minds the necessity of at least five persons being concerned in the offence. 1932 Cal. 295; 1. R. 1932 Cal. 336; 33 Cr. L. J. 477; 1932 Cr. C. 264; 137 I. C. 497.

—the Judge should not put the prosecution case too strongly and fail to put the defence case as strongly as it should be. The facts. Where caution in the trial. 354; 37 C. W.

1. P. C.—refers to the will of the girl and not the will of her guardian. So where

S. 298—contd.

the Judge said: "the girl being a minor can have no will of her own in law and that in law her will was presumed to be the same as her guardian's will," there was misdirection to the jury. 36 C. W. N. 49. I. R. 1932 Cal. 382; 1932 Cal. 442; 33 Cr. L. J. 512; 137 I. C. 819.

—in a case of rape even though the accused denies the whole story, the judge should tell the jury that the burden was on the prosecution to prove in addition to the factum of sexual intercourse that the girl was below 14 or else that the accused committed the offence against her will or without her consent. 37 C. W. N. 484

S. 303

—a verdict of not guilty covers every degree of mental condition from hesitating doubt to complete conviction of innocence. A verdict that "the jurors give the accused the benefit of doubt" is not legal. 37 C. W. N. 341; 1933 Cal. 404. 1933 Cr. C. 582.

Ss. 306 and 307.

—the provisions of ss. 306 and 307 are mandatory. The Judge must consider the verdict. 13 Lab. 573; 1932 Lab. 345; 1932 Cr. C. 426; 33 Cr. L. J. 220; I. R. 1932 Lab. 181. 136 I. C. 5.

—If the Judge expresses his complete dissent the special sanctity of the verdict of the jury disappears and it need not be shown to be perverse. 1932 Pat. 246; 11 Pat. 669; 139 I. C. 885; 13 Pat. L. T. 418; 1932 Cr. C. 643; 33 Cr. L. J. 877, but the Session Judge, unless his dissent is such to consider it unnecessary; *same case.*

—verdict of the jury on all or any of the charges, he must submit the *whole case*. 11 Pat. 395; 1932 Pat. 156; 13 Pat. L. T. 93; 1932 Cr. C. 273; 137 I. C. 190. 33 Cr. L. J. 505, 21 C. W. N. 435 *fol.*

—a disagreement within the meaning of s. 307 is one of the conditions precedent to a reference. The Judge is not justified in referring the case to the H. C. where his quarrel with the jury's verdict is that the persons who were found guilty should in fact have been found not guilty. 37 C. W. N. 591.

—except what is obviously the jury he can make further case to the H. C. for 3 Cr. C. 1053

—supported by evidence the Judge should not make a reference. 1933 Pat. 481; 1933 Cr. C. 1010; 144 I. C. 872; 34 Cr. L. J. 828.

—interference with the verdict of the jury, except in the case of flagrant and patent miscarriage of justice, is dangerous and liable to lead to the condemnation of innocent people. 1933 Cal. 665
Sp B

—though a Judge agrees with the verdict of the jury in respect of some of the charges but disagrees in respect of other charges

Ss. 306 and 307—contd

he should not, before reference, record an order of acquittal or conviction in respect of any of the charges. 1933 Cal. 665 **Sp B**.

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 triable by jury, where he disagrees with their verdict, he should follow the procedure laid down in s. 307. The Judge should first dispose of the charges triable with the aid of assessors and then consider whether justice required that he should make a reference under s. 307 on other charges. 33 Bom. L. R. 1571 : 135 I. C. 495 : I. R. 1932 Bom. 111 : 1932 Cr. C. 85 : 33 Cr. L. J. 172, 55 M. 715 : 1932 Mad. 512 : 1932 Cr. C. 430 : I. R. 1932 Mad. 466 : 137 I. C. 810, (8 Bom. L. R. 599, 9 Bom. L. R. 1057, 36 M. L. J. 452) *Ref*.

—in making a reference the Judge should state the offence which he considers has been committed then he should clearly be of opinion that it is necessary for the ends of justice to submit the case to the H. C. 37 C. W. N. 341 : 1933 Cal. 404 : 1933 Cr. C. 582.

—in cases under s. 307 where the Judge takes one view and the jury takes another the H. C. should, before its interference, satisfy itself that the jury on a fair consideration of the evidence in the case had taken a perverse view and that its verdict should not stand. The Judge's view should be given the same weight as the verdict of the jury. 56 C. L. J. 19 : 138 I. C. 278 : I. R. 1932 Cal. 439 : 33 Cr. L. J. 593 : 1932 Cr. C. 648 : 1932 Cal. 656 **F. B**, 34 Bom. L. R. 896 : 139 I. C. 272 : 33 C. L. J. 745 : I. R. 1932 Bom. 490 : 13 Lah. 573 : 1932 Lah. 345 : 136 I. C. 5 : I. R. 1932 Lah. 181 : 33 Cr. L. J. 220.

—the words of s. 307 entitle the Court to exercise any of the powers which it may exercise in appeal. It may, after giving due weight to the opinion of the Judge and jury substitute a verdict of guilty for one of acquittal. 60 C. 427 : 37 C. W. N. 91 : 141 I. C. 578 : 1933 Cal. 47 : 1933 Cr. C. 61 : I. R. 1933 Cal. 138.

S. 308.

—premature opinion expressed by juror to his friend in private conversation cannot be ground for retrial. 1932 Cal. 750 : 33 Cr. L. J. 869 : I. R. 1932 Cal. 683 : 140 I. C. 18 : 1932 Cr. C. 744.

S. 309

—the omission of the Session Judge to make any reference in the judgment to the usual practice cured by s. 537 C

—the opinion standing of the assessor for his reasons.

S. 337.

—a person acting under compulsion and threat of murder and not with a view to assist the offender, cannot be an accomplice

S. 337—contd.

33 Cr. L. J. 567: 138 I. C. 223: I. R. 1932 Lah. 429: 33 P. L. R. 269.

—the word "already" in the amended sec. refers to the term when the Magistrate tenders a pardon. He can tender pardon at any stage of the trial or investigation. If the accused to whom he tenders pardon is already on bail there is no necessity for the approver to be remanded to custody thereafter, but if he is not on bail the M. is bound to retain the approver in custody until the termination of the trial. 1932 Sind 40. I. R. 1932 Sind 174: 140 I. C. 153: 33 Cr. L. J. 906.

—s. 337 (2 A) cannot be interpreted to mean that the approver must be committed for trial to the Court of Sessions. It means that when pardon has been granted to one accused who has been examined as a witness, the case against the other accused must be committed to the sessions, if a *prima facie* case against him has been established. 1932 All. 581: I. R. 1932 All. 566: 139 I. C. 408: 1932 Cr. C. 699: 1932 A. L. J. 754. 33 Cr. L. J. 802.

—a *Special M. trying a case under Ordinance 11 of 1932* and tendering a pardon to an approver can proceed with the trial and need not commit the case to Session. The provisions of the Code are overruled by those of the Ordinance when they are at variance. 60 C. 652

S. 339.

—an approver should not be prosecuted for perjury for making contradictory statement when he has reverted to truth in later statement. 1932 Lah. 307: 137 I. C. 748: 33 Cr. L. J. 485: I. R. 1932 Lah. 350: 1932 Cr. C. 421.

—where the actual statement the approver made was clearly induced by promise of pardon and not made under pressure, the statement was admissible under s. 339 (2) Cr. P. C. 1933 Lah. 910: 1933 Cr. C. 1297.

S. 339-A

—where in the judgment of the Session Judge there was definite finding that the approver had failed to comply with the conditions of the pardon but inverted the order of issues, held that there was no irregularity which would vitiate the trial. 1933 Lah. 910: 1933 Cr. C. 1297.

S. 342.

—whether s. 342 is applicable to maintenance proceedings under s. 488 Cr. P. C. 36 C. W. N. 380: 1932 Cal. 488: 138 I. C. 629: I. R. 1932 Cal. 477: 1932 Cr. C. 480: 33 Cr. L. J. 640.

—the task to comply with the provisions of this sec. is so represented by counsel it is so should formally ask a counsel to offer explanation and least dangerous

S. 342—contd

—where the accused confessed guilt but not intended it to be recorded, held that the whole statement was rightly recorded. 56 B 434 1932 Bom 279 34 Bom. L. R. 571 : 1932 Cr. C. 391 : 33 Cr. L. J. 613 138 I. C. 503 1 R 1932 Bom 338.

—the Judge has power to refuse to record irrelevant answers and if necessary, may prevent the accused making lengthy irrelevant answers. 1933 All. 690 : 145 I. C. 481 : 1933 A. L. J. 798 : 1933 Cr. C. 1202

—when after the accused has been examined under this sec. the investigating officer is examined the Magistrate should give the accused opportunity under this sec. to explain the evidence recorded against him. 1932 Sind 165 : 1932 Cr. C. 743.

—it is the duty of the Court before drawing an adverse inference against the accused on any point to call his attention to it and ask for an explanation, otherwise the accused cannot be said to have failed to explain and no adverse inference can be drawn against him. 37 C. W. N. 514 : 142 I. C. 335 : 1 R. 1933 P. C. 65 : 1933 M. W. N. 409 : 57 C. L. J. 177 : 1933 P. C. 124 : 34 Cr. L. J. 322 P. C.

“ the provisions of this sec.
proceedings have resulted in
10 Rang 511 : 1932 Cr. C.
resulted in prejudice to the
578 : 1933 Cal. 341 : 1 R.

—infringement of this statutory provision such as omission to examine each of the accused separately is an illegality and is not condoned by s. 537 Cr. P. C. 1932 Lah. 664, 1932 Lah. 853.

—where long after the closing of the case the M. examines a witness under sec. 540 but does not further examine the accused under s. 342, the trial is vitiated. 56 C. L. J. 583 : 1933 Cr. C. 419 : 1933 Cal. 347, but where after the arguments were commenced one prosecution witness was recalled and some questions were put to him the non-compliance with the formalities of sec. 342 does not vitiate the trial. 57 C. L. J. 57.

S. 344.

—the Court should not adjourn a case *sine die*. 1932 Sind 214 : 1932 Cr. C. 905, 4 I. C. 537 Exp.

—in the case of an application for transfer under s. 526 no order for costs can be made. 56 B. 536 : 1932 Bom. 470 : 139 I. C. 577 : 1 R. 1932 Bom. 509 : 33 Cr. L. J. 802 : 34 Bom. L. R. 1106 : 1932 Cr. C. 598, and in the same case it has been held that the

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S. 344—contd.

—the explanation to s. 344 describes only one type of reasonable cause. Where the M. properly directs a postponement he has unfettered discretion to remand the accused to custody. 37 C. W. N. 683.

—s. 344 has no application to completed proceedings. 1931 Pat. 411 : 1931 Cr. C. 999 : 12 Pat L. T. 671.

—where the total period of remand permissible under s. 167 has expired the M. cannot make fresh remands to police custody. 1931 Lah. 99 : 1931 Cr. C. 163 : 12 Lah. 435, but see. 1931 All. 617 : 32 Cr. L. J. 1045 : 133 I. C. 617 : 1931 A. L. J. 617 : 1931 Cr. C. 969.

S. 345.

—the Court should not, in the matter of allowing a composition of an offence under s. 420 I. P. C., substitute the discretion of the police officer conducting the prosecution, when the party charged asks for it. 1932 M. W. N. 1088.

—a compromise made after the hearing of the appeal does not come under s. 345. 1933 All. 434 : 1933 Cr. C. 740.

—the effect of compounding of a compoundable offence, apart from the acquittal of the accused is that a suit for damages will not lie. 1933 Bom. 413 : 35 Bom. L. R. 850.

S. 347.

... ..ant ease must follow the
the accused is entitled to
before committal. 33 Cr.
C. 343 : 1932 M. W. N. 634 :

S. 350

—transfer of case from first class Bench to second class Magistrate after taking up of the case for trial summarily, discharge of accused for absence of complainant, fresh complaint if sustainable. 55 M. 795 : 1932 Mad. 505 : 1932 Cr. C. 509 : 138 I. C. 581 : I. R. 1932 Mad 594 : 33 Cr. L. J. 653 : 1932 M. W. N. 244.

S. 350-A.

... .. the Bench
... ..ial of the
... .. : 1932 All.
... .. 1932 Cr. C.
... .. 32 A. L. J.

S. 356.

—the mere fact that imperative rule of procedure has been broken is not enough to vitiate the trial or proceeding. 1931 All. 3 : 53 A. 172 : 129 I. C. 269 : 32 C. L. J. 372 : 1930 A. L. J. 1504

—where in an inquiry under s. 145 the M. failed to comply with provisions of s. 356, in recording evidence, held that the error in

S. 356—contd.

procedure did not vitiate the inquiry. 1931 All 2 : 32 Cr. L. J. 368 : 1 R. 1931 A 137 : 129 I. C. 265, 25 M. 61 Dist., (20 A. L. J. 874, 3 Rang. 139) *Approved*.

S. 362

—in cases in which an appeal does not lie, the Presidency Magistrate is not bound to record the evidence and the H. C. cannot interfere in the matter. 56 B 260, 1932 Bom. 180 : 1 R. 1932 Bom. 236 : 137 I. C. 188 : 1932 Cr. C. 239, 10 Bom. L. R. 201 *Diss.*

—in such an interference case under s. 488
Magistrate to record
n. 242 : 137 I. C. 27 :

S. 366.

—a judgment delivered by a Sessions Judge after handing over charge to his successor and vacating his office is without jurisdiction and bad in law. 1932 All. 582 : 1932 Cr. C. 700 : 1932 A. L. J. 753.

—a composite in three cases is bad. 1932 Lah. 664.

S. 367.

—once a judgment has been sealed, signed and delivered it should remain in the shape in which it was originally published. 1933 Sind 91 : 1933 Cr. C. 219 : 142 I. C. 587 : 1 R. 1933 Sind. 105 : 34 Cr. L. J. 367 : 1933 Cr. C. 219

—a judgment written by a M. ceasing to have jurisdiction is invalid. 1931 Pat. 386 : 134 I. C. 625 : 1931 Cr. C. 914, 50 C. 664 *fol.*

S. 370.

—the record kept by the Presidency Magistrate should furnish some indication that he has considered the evidence and arguments critically. Mere recording evidence and saying that the case is proved are not sufficient, but the defect is curable under s. 537, 36 C. W. N. 852 : 139 I. C. 244 : 33 Cr. L. J. 729 : 1 R. 1932 Cal. 857 : 1932 Cr. C. 632.

—in a case involving a fine of less than Rs. 200 a Presidency Magistrate should only make a brief statement when he writes a judgment on the evidence. 37 C. W. N.

300.

S. 374.

—the restriction contained in s. 418 as regards appeals in jury cases to be confined to matters of law does not apply to references under s. 374 Cr. P. C. 1932 Pat. 302 : 1932 Cr. C. 774 : 13 Pat. L. T. 440.

—the H. C. must rely upon the jury's verdict if it is a reasonable test. But where there is no sufficient ev

S. 403—contd.

—where the accused was charged under secs 19 (f) and 20 of the Arms Act and was discharged under s. 19 (f) but convicted under s. 20 which was set aside by the Sessions Judge as being without jurisdiction fresh trial on commitment was not barred. 1932 Cal 683 : 36 C. W. N. 926 : 139 I. C. 470 : I. R. 1932 Cal. 628 : 33 Cr. L. J. 770 - 1932 Cr. C. 636

—where the case of the accused was taken up by the first class Bench for summary trial and was then transferred to the
 the accused under
 case was
 jurisdiction.
 81 : I. R.

S. 436.

—where a M. has discharged the accused under s. 107 Cr. P. C. the Sessions Judge cannot under s. 436 set aside the order of discharge and direct a further inquiry. 1931 All. 53 : 53 All. 148 : I. R. 1931 All. 294 : 130 I. C. 630 : 32 Cr. L. J. 570.

S. 407.

—where a Magistrate holding second class powers takes
 then is vested with first class
 M. 36 C. W. N. 302 : I. R. 1932
 C. 450 : 1932 Cal. 460 : 137 I. C.
 48, 1925 Pat. 472) Ref.

S. 411.

—appeal does not lie to the H. C. from an order under s. 562 Cr. P. C. passed by a Presidency Magistrate. 36 C. W. N. 459 : 1932 Cal. 488 : 1932 Cr. C. 480 : I. R. 1932 Cal. 478 : 138 I. C. 627 : 33 Cr. L. J. 639.

S. 413.

—the expression "a sentence of fine" includes a case where
 Rs. 50. So if one sentence
 passed no appeal lies. 59 C.
 1. 1932 Cal. 525 : 33 Cr. L. J.
 51, 35 C. W. N. 753, 96 I. C.

270, Ref.

S. 415.

—the word "therein" in s. 415 refers to ss 413 and 414. 1932 Oudh 27 : 1932 Cr. C. 59 : I. R. 1932 Oudh 104 : 136 I. C. 248.

S. 417.

—no appeal under s. 417 can be preferred by the L. G. against an order of acquittal when an appeal preferred by the accused against his conviction has already been heard and decided by the H. C. But there can be an application for enhancement of sentence

S. 417—contd.

under s. 439 Cr. P. C. 1932 Nag. 73. 139 I. C. 63 : I. R. 1932 Nag. 85. 33 Cr. L. J. 728. 1932 Cr. C. 346, (2 Cal. 437 F. B. 1925 Bom. 268, 1926 Bom. 555) *Ref.*

—an appeal against an acquittal for a major offence can be preferred by the L. G. although an appeal preferred by the accused against his conviction for a minor offence has been heard and decided by the H. C. 1932 Nag. 121. 28 N. L. R. 233 : 140 I. C. 49 : 33 Cr. L. J. 849. 1932 Cr. C. 672 : I. R. 1932 Nag. 118 F. B.

—appeal under s. 417 should be preferred with all reasonable expedition possible. 1932 Rang. 146 : 10 Rang. 312 : 138 I. C. 523 : 1932 Cr. C. 709. 33 Cr. L. J. 701, 5 A. 253 *fol.*

—the Public Prosecutor must make strong and cogent grounds to justify interference with a judgment of acquittal. 33 Cr. L. J. 929. 139 I. C. 756. I. R. 1932 Oudh 391, 1932 Oudh 317. I. R. 1932 Oudh 383. 139 I. C. 751 : 33 Cr. L. J. 920. I. R. 1932 Oudh 390 : 139 I. C. 740. 33 Cr. L. J. 932.

S. 418

—the restrictions contained in s. 418 as regards appeals in jury cases to be confined to matters of law does not apply to references under s. 374 Cr. P. C. 1932 Pat. 302 : 1932 Cr. C. 774 : 13 Pat. L. T. 440.

—before the H. C. interferes with a conviction in a jury trial it has to be satisfied that there was misdirection by the S. J. or improper admission or exclusion of evidence. 1932 Cal. 295 : 139 I. C. 497 : 33 Cr. L. J. 477 : I. R. 1932 Cal. 336 : 1932 Cr. C. 264.

—though the H. C. is not bound by the verdict of the jury it must rely upon the jury's verdict if it answers a reasonable test. 1933 Cal. 426 : 1933 Cr. C. 624. 37 C. W. N. 595 : 143 I. C. 173 : 34 Cr. L. J. 533 : I. R. 1933 Cal. 354. F. B.

—the words "where the trial was by jury" mean not "where the trial should have been by jury" but "where the trial was in fact by jury." 1933 All. 128 : I. R. 1933 All. 155 : 142 I. C. 800. 34 Cr. L. J. 441. 1932 A. L. J. 1103 : 1933 Cr. C. 283.

—an appeal lies on a matter of fact and no limitation is laid down that the H. C. must find that the view of the Court which acquitted the accused was perverse. 1933 All. 574 : 1933 Cr. C. 913.

—no condition is imposed on H. C. in an appeal against acquittal by Judge trying case with assessors. 1933 All. 535 : 1933 Cr. C. 870, 20A. 459 *Rel. on.*

S. 421.

—where the appellant's pleader had an opportunity of being heard and the records were sent for, he should be again heard by the S. J. on the arrival of the record and before the summary dismissal of the appeal. 138 I. C. 384 : 1932 Cal. 397 : I. R. 1932 Cal. 450 : 33 Cr. L. J. 602 : 1932 Cr. C. 344.

S. 421—contd.

—the practice prevalent in the mufussil Courts of admitting all jail appeal without any hearing except on the question of bail cannot be supported. The appellate Court must record its findings on the defence having hearing on the question of title. 37 C. W. N. 235.

S 422.

—s. 422 applies if and so far as an appeal has not been dismissed. The H. C. can dismiss an appeal by an order without giving reasons. 11 Pat. 697, (12 Pat. L. T. 539, 4 Pat. 254) *Dist.*

S 423.

—this sec. does not authorise the appellate Court to direct that a trial shall be resumed at any particular point or that a particular charge shall be framed. 1932 M. W. N. 114.

—hearing of one party in the absence of the other is illegal. 36 C. W. N. 699; 139 I. C. 436; 1932 Cal. 856; 1932 Cr. C. 887; 33 Cr. L. J. 775.

—before interfering with the verdict of the jury the H. C. must be satisfied that not only the S. J. misdirected the jury but his misdirection caused them to come to a wrong conclusion. 59 C. 1361; 1932 Cal. 474; 1932 Cr. C. 464; 55 C. L. J. 439; 139 I. C. 874; 33 Cr. L. J. 854.

—it is neither necessary nor desirable for the H. C. to issue a notice for enhancement of sentence at the time of admission of the appeal. 1933 Bom. 153; 35 Bom. L. R. 174; 1933 Cr. C. 465.

—sentence of imprisonment may be altered into one of whipping provided the sentence is not enhanced thereby. 1932 Rang. 150; 10 Rang. 317 I. R. 1932 Rang. 177; 139 I. C. 284; 33 Cr. L. J. 758; 1932 Cr. C. 711.

—s. 423 cl. (d) Cr. P. C. read with s. 439 does not authorise the H. C. in revision to award costs of the proceedings before it. 1933 All. 264; 1933 A. L. J. 188; 142 I. C. 537; 34 Cr. L. J. 414; 1933 Cr. C. 434; I. R. 1933 All. 125. F. B.

—under the combined provisions of secs. 423 and 439 the H. C. has power to alter a conviction under s. 326 I. P. C. to one under s. 302 I. P. C. 1933 Lah. 661; 1933 Cr. C. 883, (37 M. 119, 1 Rang. 436) *fol.*

—where the lower Court acquitted the accused under s. 376 but convicted him under s. 354, the acquittal under s. 376 does not amount to an acquittal under s. 354 and the H. C. can on appeal alter the conviction into one under s. 354. 36 C. W. N. 1152; 1932 Cal. 723; 1932 Cr. C. 728.

—where under Ordinance X of 1932 the matter ought to have been referred to the Local Govt. but the Judge omitted to do that and it came up to the H. C., the latter could order retrial by a Court of competent jurisdiction. 37 C. W. N. 481; 1933 Cal. 364; 1933 Cr. C. 500; 142 I. C. 310; 34 Cr. L. J. 320.

—an order relating to security can be suspended in appeal by virtue of the powers given by s. 423 (1) (d). 1932 All. 680; 1932

S 423—*contd.*

Cr. C. 856 : 139 I. C. 141 : I. R. 1932 All. 523 : 33 Cr. L. J. 731 : 1932 A. L. J. 624

—the provisions of sec. 423 (2) are not overridden by sub-sec. (6) of s. 439. Where a sentence has been passed after a verdict of "guilty" in a trial by jury the arguments on behalf of the convicted person before the appellate Court must be limited to the matters referred to in s. 423 (2). 37 C. W. N. 1122.

S 426.

—a person against whom an order under sec. 107 has been passed is a convicted person and the validity of the order can be considered by the appellate Court. 1932 All. 680 : 1932 Cr. C. 856 : 1932 A. L. J. 624 : 33 Cr. L. J. 731 : 139 I. C. 141 : I. R. 1932 All. 523.

S. 429.

—in cases of differences of opinion in the H. C. under s. 439 Cr. P. C. s. 429 Cr. P. C. and not cl. 36 of the Letters Patent lays down the correct procedure. 1932 M. W. N. 873.

S. 432.

—where the trying Magistrate tenders an explanation it is the duty of the S. J. referring the case to the H. C. to comment on the explanation. 1932 All. 683 : 1932 Cr. C. 938 : 1932 A. L. J. 819.

S. 435.

—this sec. applies exclusively to the proceedings before an inferior criminal Court and those before a superior Court. 1932 All. 124 : 1932 Cr. C. 149 : I. R. 1932 All. 327 : 137 I. C. 525 : 1932 A. L. J. 67.

—no new point which involves a question of fact cannot be raised in revision. 1933 All. 264 : 1933 A. L. J. 188 : I. R. 1933 All. 125 : 142 I. C. 537 : 1933 Cr. C. 434 : 34 Cr. L. J. 414 F. B.

—the High Court's power of revision should be exercised only in order to prevent substantial injuries or where there is invoked a point of law of general importance which may govern other cases. 1932 Bom. 637 : 34 Bom. L. R. 1441 : 56 B. 554 : 1932 Cr. C. 871.

—the H. C. can in revision consider not merely the legality of the orders under s. 144 but also the facts. 1933 Cr. C. 429 : 142 I. C. 319 : 48 :

—no Court can revise . . . W. N. 1162.

—in case of conviction by Deputy M. the District M. has power to call for the record from the Dy. M's. Court under s. 435 and to a report to the H. C. under s. 438. 57 C. L. J. 211. S. 436.

—the Sessions Judge can under this sec. direct a further inquiry. H. C. cannot direct a Magistrate to frame a charge and to try the accused on that charge. 1932 Lah. 362 : 33 Cr. L. J. 341 : Lah. 599 : 33 P. L. R. 267 : 136 I. C. 705 : I. R. 1932 Lah. 241.

S. 438.

—in a proceeding under the Ordinance 11 of 1932 the Sessions Judge is deprived of the right of calling for and examining the record under s. 435 and referring the case for orders of the H. C. under s. 438 sub-sec. (1). 1933 Cal. 401: 1933 Cr. C. 579.

—the Dt. M. cannot recommend the revision of orders passed by the Session Judge in appeal. 1933 Pat. 305: 1933 Cr. C. 826: 14 Pat. L. T. 364, but see 37 C. L. J. 211.

S. 439.

—the High Court's power of revision under s. 439 Cr. P. C. in respect of an order of conviction passed by the Union Bench is restricted. But s. 107 of the Government of India Act may justify such interference in a proper case. 59 C. 1080: 1932 Cal. 867: 1930 Cr. C. 891.

—the H. C. will not generally entertain a revision when the applicant could have gone to the Dt. M. or the S. J. But this practice does not oust the jurisdiction of the H. C. to entertain revision. 54 All 331: 137 I. C. 686: 33 Cr. L. J. 528: 1932 All. 125: 1932 Cr. C. 150: I. R. 1932 All 351.

—the dismissal of an appeal by the H. C. does not preclude it to enhance the sentence in the exercise of its revisional jurisdiction. 1932 Pat. 126: I. R. 1932 Pat. 42. 10 Pat. 872. 13 Pat. L. T. 17. 33 Cr. L. J. 155: 135 I. C. 522.

—a sentence of fine only in a conviction under s. 325 I. P. C. is irregular but the H. C. should not interfere with it in revision as the revisional power is intended for the redress of genuine grievances and not of mere formal defects. 1933 Pat. 179: 142 I. C. 624: I. R. 1933 Pat. 161: 34 Cr. L. J. 407: 1933 Cr. C. 510.

—the H. C. can interfere in revision in a proper case even at the instance of the
Lah. 364: 33 P. L. R. 38
I. C. 717, 1932 Lah. 559:
J. 831: 33 P. L. R. 911,
Lah. 613. 1932 Cr. C. 919.

—if the order under s. 439 Cr. P. C. dismissing the complaint is otherwise good the
the irregularity can
party complaint ag
N 674: 1932 Cal 697
I. R. 1932 Cal. 473.

—a conviction for cheating cannot be substituted in the place of a conviction for theft. 11 Pat. 392: 1932 Pat. 241: 139 I. C. 76, 33 Cr. L. J. 709: 1932 Cr. C. 638: I. R. 1932 Pat. 201.

—where the H. C. is satisfied that an accused is being prosecuted without there being any material for the prosecution it should interfere to stop patent injustice calling for a prompt redress. 1932 Pat. 72: I. R. 1932 Pat. 129: 33 Cr. L. J. 349: 1932 Cr. C. 136. 136 I. C. 842, 26 C. 786 *Ref.*

S. 439—contd.

—s. 423 Cl (d) Cr P C. read with s. 439 does not authorise the H. C to award costs of the proceedings before it. 1933 All 264; 1933 Cr C 434. 1933 A. L. J. 188. I. R. 1933 All. 125: 34 Cr. L. J. 414; 142 I. C. 537 F. B.

—when an order under s. 144 is passed against a person the proper procedure is to apply under sub-sec. (4) to the Dt. M. But in exceptional cases the H. C. can entertain a revision against such order. 37 C. W. N. 262.

—the H. C. does not interfere with an error or omission or irregularity unless the same has caused a failure of justice. 1933 Oudh 421

—the H. C. will interfere and quash proceedings even though they are of an interlocutory nature in cases where it is clear that interference is necessary where no offence has obviously been committed. 1933 Bom. 409: 1933 Cr. C. 1173: 35 Bom. L. R. 845.

—there is nothing in s. 439 which requires that when an accused person is already before the Court by their advocate or pleader, it is nevertheless incumbent upon the Court to issue notice to him to bring him before the Court. 37 C. W. N. 1122.

—the H. C. would interfere and reduce a sentence in revision even if moved by third party when the convicted person is under unsuperable difficulties in agitating grievance; but where the convicted person is a man of position holding university degrees and practising as a lawyer and does not appeal, the H. C. will not entertain an application for reduction of sentences at the instance of third party. 1933 Cal. 361: 1933 Cr. C. 497.

—sub-sec. (b) does not apply to a convicted person whose sentence has been commuted. 1932 Pat. 126: I. R. 1932 1932 Cr. C. 153.

—it does not override the provisions of s. 439 of sentence being enhanced.

37 C. W. N. 1122.

S. 443.

—the provisions of Chap. XXXIII can be invoked for the trial of an offence of murder because an accused charged for murder may ultimately be convicted of a lesser offence. 1932 Lah. 490: 33 P. L. R. 578, 1932 Cr. C. 628: 33 Cr. L. J. 529: 137 I. C. 763.

S. 446.

—the Sessions Judge cannot interfere with a Magistrate's decision as to the applicability of Chap XXXIII to a particular case. 1932 Lah. 490: I. R. 1932 Lah. 332: 137 I. C. 763: 33 Cr. L. J. 529: 1932 Cr. C. 628.

S. 476.

—the provision of this sec. is mandatory and the Court must record a finding that it is expedient in the interests of justice

S. 476—contd.

40 I. C. 323 : 33

justice that an and in order to prosecute a man it must be shown that he has not merely given evidence which is contradictory or which has not been believed but evidence which is intentionally false, so as to form the basis of an enquiry. 1932 Bom. 551 : 34 Bom. L. R. 1247 : 140 I. C. 619 : 1932 Cr. C. 783

—unless it is expedient in the interests of justice that an enquiry should be made into t
s 476 is not maintainable. 1933

—a complaint under s. 195 Court before which and the occasi to have been committed. 1932 Cr. C. 640 : 33 Cr. L. J. 860 : 139

—where in a case under appeal ran thus, "Heard the a, sery to direct prosecution of the respondent in this case, Appeal dismissed;" held that the provisions of sec. 367 Cr. P. C. were not complied with and the judgment was bad. 35 C. W. N. 660 : 1931 Cal. 454 : 133 I. C. 672 : 32 Cr. L. J. 1045 : 1931 Cr. C. 606 : I. R. 1931 Cal. 736.

—the remedy open to a person aggrieved by a complaint under s. 476 Cr. P. C. should be limited to an appeal under s. 476-B and it is not permissible to call the complainant in question during appeal against conviction. 55 C. L. J. 336 : 1932 Cal. 545 : 1932 Cr. C. 545 : 140 I. C. 544.

—where contradictory statements were made before the sions Judge, the latter had 5 M. 536 : 33 Cr. L. J. 519 : M. W. N. 724 : 1932 Cr. C.

S. 476-B

—the H. C. will not lightly interfere in revision with the discretionary power of the lower court in the matter of prosecution. 1932 Pat. 243 : I. R. 1932 Pat. 245 : 13 Pat. L. T. 370 : 139 I. C. 543 : 1932 Cr. C. 640 : 33 Cr. L. J. 860.

—an appeal from the sentence of an Assistant Sessions Judge lies to the Sessions Court and not to the H. C. 37 C. W. N. 192 : 1933 Cal. 192 : 1933 Cr. C. 243.

—s. 476 (b) is not exhaustive as to the powers of the appellate court in the case of a complaint made under s. 476 and the appellate court can remand and summarily dismiss the case. 65 M. L. J. 534 : 1933 Mad. 767 : 1933 M. W. N. 902.

S. 498.

—there can be no objection to the parties compromising before the Magistrate by agreeing among themselves as to what should be

S. 488—contd.

the proper rate of maintenance. Where the compromise relates to extraneous matter, it cannot be given effect to in Criminal Court. In such a case the Criminal Court shall dismiss the petition under s. 488 and refer the wife to a Civil Court to enforce the agreement. 1932 Lah. 349; 137 I. C. 364; I. R. 1932 Lah. 339; 33 Cr. L. J. 488; 1932 Cr. C. 430.

—it is erroneous to refuse to award maintenance to a wife merely for the reason that she had been ex-communicated from her caste, especially unjustly. 34 Bom. L. R. 1449.

—the Civil Court decrees cannot be ignored in a proceeding for maintenance. 1932 All. 583; 1932 A. L. J. 766; 1932 Cr. C. 701. But a Civil Court decree for arrears of maintenance or only the pendency of a suit for future maintenance does not bar the maintenance of an application under s. 488 Cr. P. C. 59 C. 1229; 36 C. W. N. 571; 55 C. L. J. 341; 1932 Cal. 698; 1932 Cr. C. 653; I. R. 1932 Cal. 471; 138 I. C. 613; 33 Cr. L. J. 634.

—the existence of a separate decree for restitution of conjugal rights in favour of the husband does not bar the granting of maintenance. I. R. 1932 Lah. 566;

that Rs. 100 is the
but for all kinds of
655; 1933 Cal. 406;

—the word "means" includes a capacity to earn money and ability to be employed. If a husband is capable of earning money, he has then B. 260; 1932 Bom. 285; 138 I. C. 625.

—the word "means" is not confined to pecuniary resources and a mere denial by a man himself of sufficiency of means is not conclusive proof of want of sufficient means. 1933 Rang. 138; 1933 Cr. C. 728 F. B.

—the Magistrate should decide the validity of the question of marriage raised before him. 1932 Lah. 301; I. R. 1932 Lah. 312; 33 Cr. L. J. 447; 137 I. C. 30; 1932 Cr. C. 381.

—proof of marriage, conduct of parties. 59 C. 1257; 1932 Cal. 866; 1932 Cr. C. 890.

—the maintenance can be fixed in cash only, and not on a mixed basis of cash and grain. 28 N. L. R. 284.

—where original order of the M. for maintenance at a certain rate was not rescinded or modified but the parties settled their dispute and the Criminal Court refused to enforce the order. 133 I. C. 198; 33 Cr. L. J. 488.

—an order for maintenance does not become illegal merely because it is based on a compromise of which one term is that the wife will live separate. Where the order is given effect to.

S. 488—contd.

of the wife she must abide by the terms of the settlement. 37 C. W. N. 538, 60 M. L. J. 213 : 1931 Cr. C. 226 : 131 I. C. 173.

—where in a proceeding under s. 488 the parties compromise, the enforcement of the compromise comes within the jurisdiction of the Civil Court and the M. cannot incorporate the compromise in his order. 37 C. W. N. 736.

—a maintenance proceeding or an order for maintenance may be defeated by the husband by giving a talak. 59 C. 833.

—a *Jaina* cannot defeat the right to maintenance of his wife by taking the vows and becoming a *sadhu*. 56 B. 260 : 1932 Bom. 285 : 138 I. C. 517 : 33 Cr. L. J. 625 : 1932 Cr. C. 397 : 34 Bom. L. R. 587.

of s. 488 not with-
wrote and become a
C. 728 F. B.

owing to accused's failure to appear and consequently the passing of *ex parte* order for maintenance are not invalid. 1932 Cal. 488 : I. R. 1932 Cal. 477 : 1932 Cr. C. 180 : 138 I. C. 629 : 36 C. W. N. 380.

—an order for maintenance which had been in force for 20 years cannot be questioned by the husband so long as it was not set aside or altered under s. 489 or s. 488 (5) Cr. P. C. 1931 Lah. 574 : 132 I. C. 854 : 33 Cr. L. J. 993, 27 Bom. L. R. 136 Ref.

S. 451.

—the H. C. cannot grant costs *proprio motu* in an application for habeas corpus. 140 I. C. 530 : 55 M. 1049 : 63 M. L. J. 867 F. B.

—the word "improperly" does not include any consideration of the question whether a particular legislation is proper. It only refers to cases in which, though the forms of law have been observed there has been a fraud on an Act or an abuse of the powers given by the legislature. 36 C. W. N. 1088 : 1932 Cal. 753 : 1932 Cr. C. 796.

S. 494.

—cls. (1) and (2) do not necessarily indicate two distinct classes of cases from the point of view of their being triable by the Court of Sessions or by a Magistrate. The two clauses together exhaust the whole range of cases conceivable. 36 C. W. N. 928 : 55 C. L. J. 79 : 1932 Cal. 699 : 1932 Cr. C. 654

—a mere concurrence of opinion between the Judge and the Public Prosecutor that the prosecution case is a weak one is, by itself, not sufficient to justify withdrawal. *Above case*.

—the Public Prosecutor is the person responsible under s. 494 for making the application for withdrawal. No final inquiry is provided. The H. C. will not interfere in revision with the exercise of judicial discretion of the Court. 1932 Sind 92 : 1932 Cr. C. 532 : I. R. 1932 Sind 74 : 137 I. C. 344 : 33 Cr. L. J. 449.

—the M. is competent to permit the Public Prosecutor to withdraw a case against one of the accused to avail of his evidence for the charge against other accused. 1933 Cal. 148 : 1933 Cr. C. 225, 1929 Cal. 319 *fol*.

S. 494—contd

—it is not necessary to record any reasons for permission to withdraw. 1932 Lah. 368 : 1932 Cr. C. 486 : 136 I. C. 714 : 33 Cr. L. J. 337 : I. R. 1932 Lah. 250, 2 Pat. 708 *fol.*

—when a charge sheet was filed for offences punishable under ss 147 and 323 I. P. C. and no charge was framed though it was a warrant case, the case was covered by cl (a) and cl. (b) of sec. 494. 140 I. C. 322 : I. R. 1932 Mad. 850 : 1932 M. W. N. 1230.

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he vakil to conduct the
ivate court that does not
98 : 60 M. L. J. 520 : 1931
690

S. 496.

—where an accused is rightfully entitled to be on bail his bail cannot be cancelled except in due course of law. 1932 All. 327 : 33 Cr. L. J. 752 : 1932 Cr. C. 306 : 139 I. C. 330 : I. R. 1932 All. 554.

S. 497.

... of serious crimes
... and the more
... able that he should
... without an order of
30 : 33 Cr. L. J. 574 :

13 Pat. L. T. 530

S. 503.

...-tained in open court, giving
them and commission ought
stated in ss. 503 and 506.
C. 291 : 1932 Cr. C. 639 :

S. 506.

... of witnesses is a
it is not decision
32 Cr. L. J. 551 : 1931

S. 509.

—failure to append certificate in the prescribed form does not make the medical witness recorded by the committing M. inadmissible if the statement was recorded and attested by the M. in the presence of the accused. 1933 Lah. 131 : 34 Cr. L. J. 443 : 1933 Cr. C. 247 : 142 I. C. 577 : I. R. 1933 Lah. 213.

S. 514.

—a bond imposing a penalty should always be construed strictly and when the accused bound himself to appear only on 24 and not on any other day to which it might be adjourned, the : was not liable to be forfeited for the failure of the accused .

S. 514—*contd.*

on a subsequent day. 56 B. 220 : 1932 Bom. 290 : 1932 Cr. C. 402 : 33 Cr. L. J. 628 : I. R. 1932 Bom. 386 : 138 I. C. 512.

—there is no breach of the conditions of the bail bond if the surety has failed to produce the accused in one court and the case is transferred to another. 37 C. W. N. 880.

—the surety's liability does not terminate if the production of the accused becomes impossible owing to his having escaped from custody after arrest. 1931 Pat. 19 : 1931 Cr. C. 55 : I. R. 1931 Pat. 145 : 130 I. C. 161 : 32 Cr. L. J. 467.

S. 517.

—this sec. is wide enough to cover the case of currency notes provided at a trial for the offence of criminal misappropriation. 1932 Lah. 621.

—except in exceptional cases, the simple rule should be that if no crime is made out the M. should return the property to the party from whom it was taken. 1932 Mad. 495 : 139 I. C. 340 : I. R. 1932 Mad. 670 : 33 Cr. L. J. 783.

—an order directing the keys of a house to be made over to the complainant is in fact an order directing that possession of the house be given to him and s. 517 is rendered applicable, 1931 Lah. 527 : 132 I. C. 202 : 32 Cr. L. J. 847 : 1931 Cr. C. 751.

—an order under this sec. regarding stolen property should not be made without serving or hearing the other side. 33 Cr. L. J. 369 : I. R. 1932 Lah. 271 : 136 I. C. 735.

—where the complainant pledged certain jewels for Rs. 125

with interest to the third person before obtaining possession of the jewels. 1932 M. W. N. 1217.

—where the necklace was obtained for inspection by the accused and wrongfully pledged and the accused was absconding, the court was not competent to order regarding the disposal of jewel. 1932 M. W. N. 1345.

—where the articles forming the subject matter of an offence under s. 408 I. P. C. are validly pledged by the servant or manager the Court cannot pass an order under s. 517 disturbing the possession of the pawnee. 1931 Lah. 526 : 12 Lah. 304 : 32 Cr. L. J. 960 : 132 I. C. 835

S. 520.

—s. 520 means that any Court which has powers of appeal, confirmation, reference or revision in respect of the trial Court, can
 of property dealt with by
 ; B. 369 : 1930 Cr. C. 789 :
 . 1932 Bom. 499 : 139 I. C.
 . F. B. fol.

S 522

—the Magistrate has no jurisdiction to make the order of restoration beyond the time specifically limited by the sec and no conduct on the part of the accused can extend the jurisdiction conferred by the statute. 59 C. 1153 : 1932 Cal. 750 : 36 C. W. N. 624 : 1932 Cr. C. 745 I. R. 1932 Cal. 624 : 140 I. C. 66, 1932 Lah. 210 : 135 I. C. 679 : I. R. 1932 Lah. 151 : 33 Cr. L. J. 191 : 1932 Cr. C. 254.

S. 523.

—in his capacity of President Magistrate the court

S. 526.

—private consultation with party to compromise the case may be a ground for transfer. 1931 Lah. 32 : 130 I. C. 430 : I. R. 1931 Lah. 302 : 32 Cr. L. J. 537 : 1931 Cr. C. 96

—the power of the H. C. to transfer a case in the interests of justice and convenience of the parties is not affected by the Notification of the Local Government. 55 Bom. 576 : 1931 Bom. 313 : 32 Cr. L. J. 1147 : 1931 Cr. C. 569 : 134 I. C. 347.

—in the case of an application under s. 526 no order for costs can be made under s. 344. 56 B. 536 : 1932 Bom. 470 : 33 Cr. L. J. 802 : I. R. 1932 Bom. 509 : 34 Bom. L. R. 1106 : 139 I. C. 577, 42 B. 254 *fol.*

—the provisions of sec. 526 (8) are imperative in its terms and where the M. does not grant adjournment all the subsequent proceedings are illegal 1931 Bom. 411 : 33 Bom. L. R. 668 : 1931 Cr. C. 726 : I. R. 1931 Bom. 473 : 134 I. C. 361.

—but it applies only where the complainant or the accused notifies to the court his intention to move the H. C. 1930 All. 834 : 1930 A. L. J. 1320 : 129 I. C. 259 : 32 Cr. L. J. 363 : I. R. 1931 All. 131.

—the words "or the accused" apply to the accused as a whole. 1931 Lah. 274 : I. R. 1931 Lah. 978 : 134 I. C. 770 : 1931 Cr. C. 530.

S. 526.

—there is nothing in s. 528 which disables the M. from taking
 the petition of one of the parties.

. M. requires notice to the other
 32 Cr. L. J. 492 : I. R. 1931
 Lah. 265.

—a Sessions Judge cannot transfer an appeal from the file of the Additional Sessions Judge to his own file. 1931 All. 435 : 193 Cr. C. 707 : 1331 A. L. J. 591.

S. 528-B.

—as this sec. purports to curtail privileges conferred by other provisions in the Code, if the language of sec. 528-B appears to be ambiguous a construction favourable to the accused should be adopted. 1932 Cal. 240 : 1933 Cr. C. 325.

—an accused who has not claimed to be dealt with as a European British subject before the trial M. can claim to be so dealt with in the H. C. in a revision proceeding. 1933 Cal. 240 : 1933 Cr. C. 325.

S. 529.

—the technical insufficiency of a complaint constituted by an incomplete statement of facts is cured by s. 529. 1932 Bom. 610 : 139 I. C. 281 : I. R. 1932 Bom. 484 : 33 Cr. L. J. 733 : 34 Bom. L. R. 901.

S. 531.

—this sec. operates wherever in British India any finding, sentence or order of any Criminal Court has been arrived at or passed in wrong Sessions Divisions, District, Sub-Division or other local or a *ejusdem generis* with a sub-division, provided that in such area the Cr. P. C. applies. 1931 Rang. 164 : I. R. 1931 Rang. 273 : 9 Rang. 338 : 134 I. C. 209, (8 C. 985, 16 C. 607) *Rel. on* 21 W. R. (Cr.) 66 *Ref.*

—s. 531 is mandatory where it is nobody's case that the wrong assumption of territorial jurisdiction has in fact occasioned a failure of justice nor has the Judge expressed himself to that effect. 1931 Oudh 273 : 1931 Cr. C. 633 : 32 Cr. L. J. 826 : I. R. 1931 Oudh 210.

S. 537

—hearing of one party in the absence of the other is illegal and no question of prejudice arises. 36 C. W. N. 699 : 139 I. C. 436 : I. R. 1932 Cal. 621 : 1932 Cr. C. 887 : 1932 Cal. 856 : 33 Cr. L. J. 775.

—a mere error of procedure arising out of inadvertence will amount to no more than an irregularity. 1932 All. 28 : 33 Cr. L. J. 124 : 135 I. C. 226 : I. R. 1932 All. 50 : 1932 A. L. J. 523 : 1932 Cr. C. 37.

—non-compliance with s. 233 does not disturb the conviction, where the accused was not misled by the error and there was no failure of justice. 59 C. 1233 : 36 C. W. N. 505 : 55 C. L. J. 685 : I. R. 1932 Cal. 504 : 138 I. C. 705 : 1932 Cr. C. 337.

—the H. C. can interfere with the verdict of the jury only on point of law. 1931 Bom. 311 : 55 B. 435 : I. R. 1931 Bom. 396 : 133 I. C. 748 : 32 Cr. L. J. 1077 : 1931 Cr. C. 567.

—the failure to record the reasons with sufficient fulness under s. 370 (1) of the Code is a defect curable under s. 537. 36 C. W. N. 852 : I. R. 1932 Cal. 587 : 139 I. C. 244 : 33 Cr. L. J. 729 : 1932 Cr. C. 632.

—the omission on the part of the M. to make a record of what he saw on the spot and to file it as required by s. 559-B is a mere irregularity. 1932 All. 28 : 1932 Cr. C. 37 : I. R. 1932 All. 50 : 135 I. C. 226 : 33 Cr. L. J. 124 : 1932 A. L. J. 523.

S. 537—contd.

—the sole criterion given by s. 537 is whether the accused person has been prejudiced or not. Under the sec there is no distinction between illegality and irregularity though only the word "irregularity" is used in the sec. 1933 All. 264 : 1933 A. L. J. 185 : 1933 Cr. C. 434 : 34 Cr. L. J. 414 : 142 I. C. 537 F. B.

S. 539.

—the counsels of all the accused should be heard after the conclusion of the whole of the defence evidence, a breach of this is an irregularity but does not vitiate the trial in the absence of any prejudice. 1932 Lah. 103 : 1932 Cr. C. 123 : 135 I. C. 209 : 33 P. L. R. 891 : I. R. 1932 Lah. 81

S. 539-A

. on
lio
3:

S. 539-B.

—under this sec. the memorandum of local inspection should be drawn up without unnecessary delay and all the members of a bench of Magistrates should join in any inspection made. 1932 Mad. 676 : 138 I. C. 608 : 33 Cr. L. J. 655 : 1932 M. W. N. 645 : 1932 Cr. C. 834 :

—the omission on the part of a M. to make a record of what he saw on the spot and to file it is a mere irregularity. 1932 All. 28 : 1932 Cr. C. 37 : 135 I. C. 226 : 33 Cr. L. J. 124 : I. R. 1932 All. 50, 1931 All. 433 : 1931 Cr. C. 705 : 1931 A. L. J. 912, 1931 Oudh 388 : 1931 Cr. C. 320.

S. 540.

—where after the close of the argument the M. admits a document as fresh evidence in favour of the prosecution he should ask the accused if they wish to give any rebutting evidence and if necessary should grant an adjournment. 37 C. W. N. 1168.

—where long after the closing of the case the M. examines a witness under s. 540 but does not further examine the accused under s. 342, the trial is vitiated and cannot be cured by s. 540. 56 Cr. L. J. 583 : 1933 Cal. 347 : 1933 Cr. C. 419.

—the sec. is not wholly discretionary though the discretion under the sec. is wide. 1933 Sind 49 : 1933 Cr. C. 175.

—there is nothing in s. 139-A, Cr. P. C. which could exclude the exercise of the court's inherent powers under s. 540. 58 C. 461 : 1931 Cal. 527 : I. R. 1931 Cal. 862 : 134 I. C. 374 : 1931 Cr. C. 679.

S. 540-A.

—the accused should not be granted exemption from attending the Court for reasons which are not covered by s. 540-A. 1932 504 : 1930 Cr. C. 586, but the words "incapable of remaini

S. 540-A—contd.

before the court" in s. 540 can be made to include the case of a person who is in no way incapacitated from attending the Court but wishes to go to a remote place for private reasons. 1932 All. 504 : 1932 Cr. C. 586

S. 547.

—compensation granted under s. 250 Cr. P. C. is recoverable as it were a fine and the methods of recovering fine are provided in sec. 386 Cr. P. C. 1932 Pat. 301 : 1932 Cr. C. 773 : I. R. 1932 Pat. 290 : 140 I. C. 72 : 33 Cr. L. J. 958. *F. B.*

S. 548.

—a third person who is not a party to the case is not a person affected by the judgment of the Criminal Court and therefore is not entitled to apply for copies of the depositions and judgment. 1932 Bom. 636 : 1932 Cr. C. 871 : 34 Bom. L. R. 1445, 53 A. 724 *Diss. from.*

—the expression "affected by the judgment" must not be construed narrowly. It cannot be said that the father of a convicted person is not "affected by the judgment or order. 1931 All. 364 : 1931 Cr. C. 620 : 1931 A. L. J. 405 : 32 Cr. L. J. 864.

—the report of the police under s. 202 is part of the record which should be furnished to the accused on his application. 1931 Mad. 429 : I. R. 1931 Mad. 510 : 131 I. C. 174 : 32 Cr. L. J. 689 : 1931 M. W. N. 325.

S. 551.

—there is no authority to think that the word "may" in this sec. means "must." 139 I. C. 89 : 1932 Cal. 850 : I. R. 1932 Cal. 561 : 33 Cr. L. J. 657 : 1932 Cr. C. 881.

S. 554.

—the only valid reason for refusing an inspection would be that the inspection of the particular record was against public interest. 1931 All. 364 : 132 I. C. 327 : 32 Cr. L. J. 864 : 1931 A. L. J. 405 : 1931 Cr. C. 620.

S. 556.

—committing Magistrate giving evidence as to identification parade, is not personally interested under this sec. 1932 Lah. 196 : 13 Lah. 461 : 135 I. C. 675 : 33 P. L. R. 641 : 33 Cr. L. J. 188 : 1933 Cr. C. 217.

S. 561-A.

—under this sec. the H. O. has power to expunge any improper remarks made against a witness in the judgment of the lower Court. 137 I. C. 850 : I. R. 1932 Lah. 362 : 33 Cr. L. J. 534.

—"process" is a general word which means in effect anything done by the Court. The court may alter or review its own previous order for the examination of witness in Court and substitute one for his examination on commission. 1931 Pat. 81 : 11 Pat. L. T. 892 : 1930 Cr. C. 201 : 130 I. C. 538 : I. R. 1931 Pat. 186.

S. 561-A—contd

—this sec confers no inherent power and is confined in its application to the High Courts. Even the Lower Courts can exercise inherent powers provided there is no express provision in the Code. 1931 Pat. 81 : 130 I. C. 538 : I. R. 1931 Pat. 186 : 32 Cr. L. J. 551 : 1931 Cr. C. 201.

S. 562.

—burglars should not be released on probation of good conduct as it is a serious crime. 1932 Lah. 258 : 33 P. L. R. 215 : 1932 Cr. C. 323 : 33 Cr. L. J. 500

—no appeal lies to the H. C from an order of the Presidency Magistrate made under this sec. 1932 Cal. 488 : I. R. 1932 Cal. 478 : 36 C. W. N. 459 : 33 Cr. L. J. 639 : 138 I. C. 627 : 1932 Cr. C. 480.

—the expression "punishable with death or transportation for life" should be interpreted disjunctively and women, convicted of an offence for which transportation for life is one of the punishments provided, may be released on probation under s. 562. 1932 Nag. 130 : I. R. 1932 Nag. 115 : 28 N. L. R. 260 : 1932 Cr. C. 666 : 140 I. C. 59.

—admonition is not intended to apply to offence of the nature of defamation. 1932 Nag. 97 : 1932 Cr. C. 519 : 28 N. L. R. 106 : 33 Cr. L. J. 835 : I. R. 1932 Nag. 112.

EVIDENCE ACT.**S. 10.**

—the question whether a letter written by an accused after his arrest to another accused person is admissible in evidence depends upon whether the provisions of sec. 10 have been complied with, the fact of the accused being under arrest is not material as it is not in the nature of mere confession. 1932 Cal. 557 : 1932 Cr. C. 576 : 137 I. C. 317 : 33 Cr. L. J. 456 : I. R. 1932 Cal. 292.

—"anything said" includes statements made, speeches delivered or declarations made. "Anything done" must be some act done and not merely the intention or knowledge of the person. "Anything written" includes a manuscript, signed or unsigned, written by the person and matter transcribed by him on a typewriter. 1933 All. 690 : 145 I. C. 481 : 1932 Cr. C. 1202 : 1933 A. L. J. 799.

—letters from foreign revolutionary to the accused is sufficient proof of conspiracy, the prosecution need not proof handwriting. 1933 All. 690 : 145 I. C. 481 : 1933 Cr. C. 1202 : 1933 A. L. J. 799.

S. 11.

—the expression "highly probable or improbable" indicates that the connection between the facts in issue and the collateral facts ought to be proved must be immediate as to render the co-existence of the two highly probable. 1933 All. 690 : 145 I. C. 481 : 1933 A. L. J. 799 : 1933 Cr. C. 1202.

S. 25.

—this sec. was intended to apply to Police Officers alone and not to persons who are provisionally and for a limited purpose invested with some of the powers of police officer's. So a confession made before an Excise Inspector invested with the police powers is admissible in evidence. 1932 Pat. 293 : I. R. 1932 Pat. 299 : 140 I. C. 283 1932 Cr. C. 765. 13 Pat. L. T. 627, Sp. B., 36 C. W. N. 163. 1932 Cal. 122. 140 I. C. 257 I. R. 1932 Cal. 706, but see 58 I. C. 1260 35 C. W. N. 601 1931 Cal 350.

—the term "police officer" has not been defined anywhere. The term should not be read in any technical sense but in its more popular and comprehensive meaning which connotes nothing more or less than a member of the police force. 1932 Pat. 293 : 1932 Cr. C. 765 : 13 Pat. L. T. 627 : 140 I. C. 283 : I. R. 1932 Pat. 299 Sp. B. 1 C. 207. *Rel. on.*

S. 26,

—statement made by the accused to the daroga showing the place in the jungle where the occurrence took place, cannot be admitted in evidence as this confession is made to a police officer while in custody. 1933 Cal. 146 : 1933 Cr. C. 223.

—though it is not a rule of law that the accused cannot be convicted upon a retracted confession, it is very necessary as a rule to make certain before acting on it. 57 C. L. J. 213.

S. 27.

—confession of guilt made to an Honorary Magistrate is admissible. 1932 Lah 261 : 1932 Cr. C. 326 : 33 Cr. L. J. 632 : I. R. 1932 Lah. 504 : 138 I. C. 497.

—where three accused one after the other said to the Sub-Inspector that some of the stolen properties were at particular places and some of them were later on discovered, the first accused was the person who gave information leading to discovery. 1932 M. W. N. 113, 1931 M. Cr. C. 123 *fol.* 36 C. W. N. 373 : 1932 Cal. 297 : 33 Cr. L. J. 546 : 1932 Cr. C. 266 : 59 C. 1040 : I. R. 1932 Cal. 417 : 138 I. C. 116.

—s. 27 is not merely a proviso to sec. 26 but it cuts down the operation of sec. 24 and 25 as well. A statement made to the Sub-Inspector while in custody is admissible if it is a confession of the guilt of the accused. 33 Cr. L. J. 417, 56 B. 137 I. C. 1932 Mad. 1932 Cr. C.

355 F. B.

—self-accusation made to a police officer when in police custody falls under this sec. 1933 Pat. 149 : 1933 Cr. C. 404 : 12 Pat. 241 : I. R. 1933 Pat. 139 : 142 I. C. 474 : 34 Cr. L. J. 349 Sp. B.

—where the police officer arrested the accused for being in possession of cocaine after the finding of cocaine with him

S. 27—contd.

followed the accused to a place where the accused pointed out the spot where the cocaine might be found, held that the accused was in police custody and his statement was inadmissible. 1933 Cal. 148. 1933 Cr. C. 225.

—in regard to statements made by accused persons, the Cr. Pr. Code does not in s. 162 alter the provisions of sec. 27 Evi. Act. There is no contradiction between the two sections as sec. 162 does not apply to statements by accused persons. 1933 All. 440: 1933 Cr. C. 746.

S. 29.

—a voluntary confession does not become inadmissible simply because the accused was not warned by the Magistrate that he was not bound to make such confession. S. 164 Cr. P. C. is in conflict with s. 29 Evi. Act, in this respect and the latter will prevail. 55 M. 711. 1932 Mad. 431: 1932 Cr. C. 412: 33 Cr. L. J. 526: 137 I. C. 863: I. R. 1932 Mad. 459: 1932 M. W. N. 447, 31 A. 592 F. B.

S. 30.

—when an accused person imputes the commission of an offence to his co-accused without implicating himself fully, the said statement cannot be used as evidence against the co-accused. 54 A. 350: 1932 All. 228: 135 I. C. 838: 33 Cr. L. J. 201: 1932 Cr. C. 226

—where there is no other evidence to show that any portion of the exculpatory element in the confession is false the Court must either accept or reject the confession as a whole and cannot accept only the inculpatory element while rejecting the exculpatory element as inherently incredible. 1932 Lah. 438: 1932 Cr. C. 584: 33 P. L. R. 511, 52 A. 1011 *fol.*

—it is always desirable to pass a sentence completely before calling upon an accused pleading guilty in a joint trial to give evidence against his co-accused. 58 C. 1214: 35 C. W. N. 490: 1931 Cal. 341: 32 Cr. L. J. 567: 131 I. C. 142: 1931 Cr. C. 405.

S. 31.

—the expression "police custody" does not necessarily mean formal arrest. It also includes some form of police surveillance and restriction on the movements of persons concerned by the police. 1932 Lah. 609. 33 Cr. L. J. 756: I. R. 1932 Lah. 578: 139 I. C. 429.

S. 32.

—the necessity of recording a dying declaration arises only
are given up. 52 C. L. J. 425: 129

is admissible where the cause of
L. J. 1118: I. R. 1931 Lah. 885:

—but the motive cannot be proved by hearsay evidence, by the testimony of a witness who heard the deceased make the

S 32—contd

statement. 54 M. 931: 134 I. C. 1143: 1931 M. W. N. 1177: 1931 Cr. C. 923 1931 Mad. 689.

—the first information report containing the dying declaration is admissible in evidence under s 32(1) 1931 Lah. 103 1931 Cr. C. 167.

S. 33.

—how to prove dying declaration. 54 M. 678: 60 M. L. J. 404 1931 M. W. N. 167: 1931 Cr. C. 478: 1931 Mad. 430.

—the deposition of a witness who died and whom the accused had an opportunity to cross-examine in the previous trial is admissible in a *de novo* trial 1932 Mad. 559. 139 I. C. 203: I. R. 1932 Mad. 641. 33 Cr. L. J. 738: 1932 M. W. N. 857.

S. 45

—the opinion of an expert to the effect that one document has been type-written on the same machine as another document is not admissible under this sec. 1933 All. 690: 1933 A. L. J. 799: 145 I. C. 481. 1933 Cr. C. 1202.

—where several experts give evidence and there are contradictory evidences, the evidences can carry little weight. 1933 Lah. 885. 144 I. C. 497: I. R. 1933 Lah. 491.

S. 114.**(a).**

—discretionary with the Court
It does not mean that if a
after theft he must prove
ds innocently. It is sufficient
raising doubt in the mind of

the Court as to the guilt of the accused just as in other cases.
35 C. W. N. 291: 1931 Cal. 617: 1931 Cr. C. 801: 134 I. C. 1071: 52
C. 223, *Ref.* 1931 Pat. 85: I. R. 1931 Pat. 208: 130 I. C. 800: 32
Cr. L. J. 614.

(b).

—it is unsafe to convict a person on the uncorroborated testimony of an approver who is no better than the ordinary run of such men. 1932 Lah. 204: I. R. 1932 Lah. 195: 136 I. C. 19: 1932 Cr. C. 248, 1932 Cal. 377: 33 Cr. L. J. 357: 1932 Cr. C. 320: I. R. 1932 Cal. 273.

—be good corroborative evidence
though not against the other
195: 33 Cr. L. J. 414: 1932 Cr.

—if the approver is not good
credited in her husband's pardon.

—retracted confession must be corroborated by independent evidence and not by the evidence of an accomplice. 36 C. W. N. 874: I. R. 1932 Cal. 709: 140 I. C. 379: I. R. 1933 All. 170: 1933 All. 31: 143 I. C. 67: 1932 A. L. J. 1125: 1933 Cr. C. 42.

S. 114 (b)—contd.

—there is no hard and fast rule that a conviction cannot be supported which proceeds on the uncorroborated testimony of an accomplice. 34 Cr. L. J. 421; 142 I. C. 809; 1933 Pat. 96; 13 Pat. L. T. 802, 1933 Pat. 500.

—the co-accused against whom the charge has been unconditionally withdrawn is a more reliable witness than the accomplice who is examined under conditional pardon though in both the cases proper corroboration is necessary. 1933 Cal. 148; 1933 Cr. C. 225.

—in order that there may be corroboration of the accomplice's evidence the material particulars must implicate the accused. 37 C. W. N. 934

—the corroboration must consist of some circumstances that affects the identity of the accused. 35 C. W. N. 1270; 1931 Cal. 697; 134 I. C. 1121; 1931 Cr. C. 977.

—the rule as to corroboration of approver's evidence is equally applicable in a case where there are more than one accomplice and even though the charge may be different of proof. 35 C. W. N. 1270; 1931 Cal. 697; 134 I. C. 1121; 1931 Cr. C. 977.

(g).

—the fact that the prosecution does not call certain witnesses named in the first information report does not give rise to the presumption under s. 114 (g) Evi. Act. 58 C. 1335; 1932 Cal. 118; I. R. 1932 Cal. 123; 135 I. C. 443; 33 Cr. L. J. 135; 1932 Cr. C. 103.

—in order to draw inferences unfavourable to the person with-
 satisfy the Court that such
 produced. 57 C. L. J. 222; I. R.
 P. C. 87; 64 M. L. J. 413;

—simply because the prosecution does not call certain witnesses, the Court need not raise the presumption under s. 114 Ill. (g) if the absence of the witnesses is explained away. 1933 Cal. 600; 1933 Cr. C. 964.

S. 118.

—an accused person is "competent to testify" within the meaning of sec. 118 but he is incompetent to be a witness because an oath cannot be administered to him. 1932 Rang. 190; 1932 Cr. C. 932; 13 Rang. 511.

S. 123.

—deposition by Government Officer not having his knowledge
 unpublished record of Govt.
 ed and allowed is not ad-
 Cr. C. 458; I. R. 1932 Cal.

and state document from
 it is to be exercised most
 sparingly. The privilege cannot be exercised in relation to documents the contents of which have already been published. 35 C. W. N. 1121; 61 M. L. J. 943; 1931 P. C. 254.

S 126.

—a draft prepared by a muktear of some statements of the complainant which were meant to be incorporated in a petition of complaint is a privileged document 37 C. W. N. 68

S 133.

—an accomplice includes one who poses as an accomplice and his evidence requires corroboration. 1932 Cal. 295 : I. R. 1932 Cal. 336 137 I. C. 497 1932 Cr. C. 264 : 33 Cr. L. J. 477.

—the testimony of the wife of the approver is not sufficient corroboration 33 P. L. R. 13

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mater
357 I
1931 :
ld not be accepted without
: 1932 Cal. 377 : 33 Cr. L. J.
54 M. 931 : 134 I. C. 1143 :
and the corroboration must
come from independent witnesses and not from the tainted evidence
of an accomplice. 36 C. W. N. 874 : 140 I. C. 379 : I. R. 1932 Cal.
709, 1933 Cal. 146 : 1933 Cr. C. 223.

—the Judge is to point out to the jury the position in law affecting the evidence of an accomplice and to tell them that they may convict if they chose on his evidence alone. 37 C. W. N. 934.

—there is no bar to the conviction of an accused person even on the uncorroborated testimony of an approver if the Court is fully satisfied as to its truth. 1931 Lah. 178 : 32 Cr. L. J. 684 : 1931 Cr. C. 298, but it is not safe. 54 M. 931 : 134 I. C. 1143 : 1931 Cr. C. 929 : 1931 Mad. 689.

S 135.

—where the prosecution witnesses as well as the complainant were present in Court and the accused for certain reasons of his own wanted to cross-examine the witnesses before the complainant and the Court insisted on the complainant being examined first, held that the M. should have acceded to the request of the accused. 37 C. W. N. 288 : 1933 Cr. C. 235 : 1933 Cal. 189 : I. R. 1933 Cal. 274 : 34 Cr. L. J. 347 : 142 I. C. 479

S. 154.

—before a party calling a witness can cross-examine him it is not necessary that the witness should first of all be declared hostile. 56 M. 7 : 1933 Mad. 137.

—it is unreasonable that good or bad faith of a witness instead of being judged by the test of cross-examination should be held to be prejudged by the true fact that cross-examination is permitted. 1933 Pat. 517 : 14 Pat. L. T. 494 : 1933 Cr. C. 1166.

—the evidence of a witness treated as hostile need not be rejected either so far as it is in favour of the party calling the witness or so far as it is in favour of the opposite party. 58 C. 1404 : 35 C. W. N. 731 : 131 I. C. 575 : 1931 Cr. C. 497 : 32 Cr. L. J. 768 : 1931 Cal. 401 : 53 C. L. J. 427 F. B.

S. 155.

—s. 155, cl. (3) does not render nugatory the clear and explicit provisions of sec. 145 and in fact takes for granted the existence and binding effect of those provisions. 1931 Lah. 38 : I. R. 1931 Lah. 282 : 130 I. C. 410 : 32 Cr. L. J. 522 : 1931 Cr. C. 102.

S. 157.

—s. 162 (1) Cr. P. C. by implication repeals s. 157 Evi. Act so far as it concerns statements made by a police officer in the course of an investigation. 14 Pat. L. T. 543.

S. 159

—reference by witness to dying declaration. Application of secs. 159 and 160. 54 M. 678 : 1931 Mad. 430 : 1931 Cr. C. 478 : 1931 M. W. N. 167.

S. 164.

—failure of the accused to produce certain documents for the inspection of the complainant does not deprive him of the right to use those documents as material for his defence or to put them to the complainant in cross-examination. 36 C. W. N. 1127.

S. 165.

—the power under this sec. should not be used for the purpose of eliciting what the law expressly and deliberately forbids being admitted. 1932 M. W. N. 625.

—the Judge cannot exercise his power under this sec. for the purpose of introducing evidence in contravention of the law, i.e., s. 162 Cr. P. C. 58 C. 1009 : 35 C. W. N. 317 : I. R. 1931 Cal. 543 : 32 Cr. L. J. 841 : 132 I. C. 159 : 1931 Cr. C. 253.

S. 167.

—where a trial Court convicts an accused on the evidence part of which has been wrongly admitted and the Sessions Court
 conviction on other evidence
 different from that con-
 curview of sec. 167. 1933
 197 : 142 I. C. 274.

—improper admission of evidence of character of the accused which has influenced the Magistrate's consideration of other evidence in the case vitiates the trial. 1931 Pat. 345 : 32 Cr. L. J. 1025 : I. R. 1931 Pat. 369 : 12 Pat. L. T. 471.

PENAL CODE.**S. 5.**

—it cannot be said down as a general rule of law that the same act cannot be punished under both Special and General Law.
 Special Act and does not
 prosecute the offender
 her than fall back upon
 penalty. 1932 All. 69 :
 C. 571 : 33 Cr. L. J. 309.

S. 21

—a person acting as candidate peon executing warrant is a public servant. 1933 Pat. 187 12 Pat. 184 142 I. C. 588: I. R. 1933 Pat. 156 1933 Cr. C. 518 34 Cr. L. J. 391.

S. 28.

is an offence which is
r counterfeiting and the
L. J. 1171: 1931 Cr. C.

S. 30.

—the original transit pass under s 40 Assam Forest Reg. is a valuable security within the meaning of s. 30 I. P. C. 59 C. 1233. 36 C W. N. 505: 55 C. L. J. 349: 138 I. C. 705: 1932 Cal. 390: 1932 Cr. C 337 33 Cr. L. J. 685.

S. 34.

—where all the accused had joined in the beating of the
but it was not shown who inflicted the fatal blow,
a for life instead
R. 1932 Lah. 328:

ns of s. 397. It is
a deadly weapon.
32 Cr L. J. 476,

—where several persons were charged for offences under ss. 467 and 193 read with s. 34 I. P. C. and some were acquitted and the rest were convicted under ss. 467 and 193 I. P. C., the conviction was invalid. 58 C. 822: 1931 Cal. 625: 133 I. C. 190: 32 Cr. L. J. 1004: I. R. 1931 Cal. 654: 1931 Cr. C. 809.

—sec. 34 does not create a new offence but it is a rule of law and applies only when a criminal act is done by several persons of whom the accused charged thereunder was one. *Above case.*

S. 40.

—if any object which is not unlawful in itself be carried out by criminal means it becomes criminal. Thus peaceful picketing which is not offence becomes so when accompanied by violence. 1931 Pat. 52: 130 I. C. 269: I. R. 1931 Pat. 173: 32 Cr. L. J. 478.

S. 52.

—search made by the Police Inspector without complying with the preliminary requirements of s. 165 Cr. P. C., and not shown to have been made under circumstances making it impossible for him to do so, cannot be said to be made in "good faith." 1932 Pat. 66: I. R. 1932 Pat. 60: 136 I. C. 60: 10 Pat. 821: 1932 Cr. C. 99: 13 Pat. L. T. 62.

—it is not using "due care and attention to publish defamatory statements about a person and also to publish his denial" let the public take their choice. 1933 All. 434: 1933 Cr. C. 740.

S. 64.

—s. 64 I. P. C. read with s. 26 General Clauses Act makes it clear that the Court may impose a sentence of imprisonment in default of payment of fine imposed for breach of a statutory rule such as not taking out a licence under s 391 of the Calcutta Municipal Act 58 C. 1239. 35 C. W. N. 865

S 71.

—where the object of an unlawful assembly is to cause hurt, a member of that unlawful assembly can in addition to being convicted under s. 147, also be convicted and separately sentenced under s. 323. 1933 Mad. 338. I R. 1933 Mad. 180: 142 L. C. 31: 34 Cr. L. J. 273. 1933 M. W. N. 254. 1933 Cr. C. 441.

—when a person is charged with rioting under s 147 and commits a fatal assault upon another person in prosecution of the common object the case comes under s. 71 I. P. C. and separate sentences for each of the charges cannot be inflicted. 35 C. W. N. 184: 1931 Cal. 450: 132 I. C. 247: 32 Cr. L. J. 990: 1931 Cr. C. 602: I. R. 1931 Cal. 567

S 84.

—in order to avail of the plea of insanity under this sec. it must be shown that the accused was incapable of understanding the nature of his act at the time when the act in question was committed. 1932 Lah. 260: 33 P. L. R. 211: 1932 Cr. C. 325: I R. 1932 Lah. 508: 33 Cr. L. J. 634

—the legal conception of insanity differs considerably from the medical conception. 1932 All. 233. 1932 Cr. C. 231: I. R. 1932 All. 536. 139 I. C. 147.

—the mere fact that the accused was driven to desperation on account of starvation does not amount to proof of insanity. 1932 Cal 658: 33 Cr. L. J. 476: I. R. 1932 Cal. 339: 137 I. C. 511: 1932 Cr. C. 650.

—the onus of proving the exception enacted under s. 84 is on the accused. 32 Cr. L. J. 816: 131 I. C. 746: I. R. 1931 Lah. 506.

S. 90.

—the object and effect of s. 90 was not to lay down that a child under 12 years of age is in fact incapable of expressing or withholding his or her consent to an act. 1933 Rang. 98: 1933 Cr. C. 573 F. B.

S 95.

—where observations made by the Court were the subject-matter of defamation the complaint was dismissed on the ground of trivial offence. I. R. 1931 Oudh 335: 132 I. C. 783: 1931 Cr. C. 424: 32 Cr. L. J. 991: 1931 Oudh 392.

S 96.

—the plea of self-defence can be raised for the first time in appeal if the facts on the record would justify such a plea. 1932 Lah. 606: 33 P. L. R. 718: 1932 Cr. C. 820.

S. 99.

—where the accused party went to the disputed spot on a river for fishing knowing that they would meet another party.

L. J. 509 13 Pat. L. T. 193

—the accused was justified in pushing the Inspector back to prevent the search when the latter did not comply with the preliminary requirements of sec. 165 Cr. P. C. 1932 Pat. 66: I. R. 1932 Pat. 60: 10 Pat. 821 136 I. C. 60: 33 Cr. L. J. 233: 13 Pat. L. T. 62

—an arrest or attempted arrest by a private person, if not strictly justifiable by law is not outside the provocation mentioned in exception, 1133 Pat. 508. 14 Pat. L. T.

S. 104

—when two persons are in a field the person entitled to immediate possession is the person in lawful possession and the other is trespasser. When the trespasser prevents the ploughing and attacks the other party with sticks he is guilty of lawful conduct and slight injuries with stick or knife inflicted by the other party may not call for punishment. But the infliction of stab wounds ultimately resulting in death would make the latter liable to be convicted under s. 326 though not under s. 302 I. P. C. 1932 M. W. N. 67.

S. 108.

—explanation 3 to sec. 108 applies to abetment generally; there is nothing to indicate that it applies only to abetment by instigation. 1933 All. 513: 143 I. C. 661. 34 Cr. L. J. 623: I. R. 1933 All. 306.

S. 109.

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island by mixing
left as a question
g of the poison
with the husband
302 and 109 I. P.
and 115 I. P. C.
1931 Cr. C. 1021:

S. 111.

—the word "act" means criminal act. 1931 Pat. 52: 130 I. C. 269: I. R. 1931 Pat. 173: 32 Cr. L. J. 478: 1931. Cr. C. 148.

S. 114.

—the language of sec. 114 indicates that there must be evidence of abetment, that is, instigation, conspiracy, or aid independent of and prior to anything done by the accused where

S. 114—contd.

present at the scene of crime. 1933 Bom. 162 : 35 Bom. L. R. 240 : 1933 Cr. C. 474.

S. 115.

—the words "express provisions" in the sec. refer to sections in which specific cases of abetment of offences punishable with death or transportation for life are dealt with. Abetment under s. 115 must be abetment of the commission of an offence by any particular person against any particular persons. It includes abetment of the commission of an offence by unspecified persons against a class or number of other persons described generally and particularly specified. 60 C. 427 : 37 C. W. N. 91 : 141 I. C. 578 : 1933 Cr. C. 61 : 1933 Cal. 47 : 34 Cr. L. J. 164.

S. 117.

—mere intention or preparation to instigate is neither instigation nor abetment. So where leaflets were posted by the accused at dead of night and immediately removed by the police, held that have read it the accused were
 the officer's themselves could not
 V. N. 982 : 1932 Cr. C. 803 : 1932

—revolutionary songs in public meeting without the assent of the President does not make him liable for abetment. 36 C. W. N. 191 : 1932 Cr. C. 549 : 1932 Cal. 549 : 33 Cr. L. J. 699 : I. R. 1932 Cal 519 : 138 I. C. 763.

S. 121-A.

—in the case of political offences arising out of the beliefs of the accused severe sentences defeat their object. The offence of criminal conspiracy is complete as soon as two or more persons agree to do or cause to be done an illegal act or an act which is not illegal by illegal means. 1933 All. 690 : 1933 Cr. C. 1202 : 1933 A. L. J. 799 : 145 I. C. 481.

—in law, the King never dies. It is not necessary to show further that the accused were conspiring for such deprivation to take place within the lifetime of His Majesty, the present King-Emperor. *Above case.*

—this sec. obviously draws a distinction between the sovereign for the time being of the United Kingdom and the Govt. of India or the Local Government. *The same case.*

S. 124-A.

—charge of partiality against Government alleging that the Govt. sided with the capitalists as against the labourers, is an offence under s. 124-A. 34 Bom. L. R. 1612.

—where the words expressed the view that the law had been employed as a weapon of tyranny and that the administration of the law view with pleasure execution carried out in pursuance of the law, they constitute an offence under s. 124-A. Held further that

S. 124-A—cont'd.

the Govt established by law in British India includes the executive power in action and does not mean merely the constitutional framework. 36 C. W. N. 510 : 59 C 1197 33 Cr. L. J. 690 : I. R. 1932 Cal 513 1932 Cr. C. 547 : 138 I C 766.

—journalist's comment when constitutes offence under this sec.
1932 Cal. 758 ; 1932 Cr. C. 801 . 33 Cr. L. J. 702 ; I. R. 1932 Cal. 526 :
138 I. C. 790

—seditious article, what constitutes offence under. 1933 Cal.
141 : 142 I. C. 293 : I. R. 1933 Cal. 254 : 34 Cr. L. J. 310.

—in awarding sentence, the circulation of the paper, the age and the education of the accused may be considered. 1933 Cal. 140; 1933 Cr. C. 201; 34 Cr. L. J. 309; 142 L. C. 292.

S. 141.

—unless a right of private defence is established a claim of title or a claim of possession, even *bonafide*, will be of no avail. There is no distinction between forming an assembly to enforce a right or supposed right within the meaning of s. 141 and forming an assembly forcibly to maintain an existing right. 1932 Pat. 215: 139 I. C. 616: 11 Pat. 523: 13 Pat. L. T. 288: 33 Cr. L. J. 864 1932 Cr. C. 496, 16 C. 206 *fol.*

\$ 145.

—where the congress processionists refused to take a different route and refused to disperse, held that the conduct of the accused coupled with the fact that the procession was animated by they were determined and that the conviction 361 : 1933 Cr. C. 497.

S. 147.

—delivery of possession without notice required by Cr. 21, R. 22 (1) (a) cannot be questioned by the judgment-debtor who forcibly disturbs the possession of the decree-holder. 1932 Pat. 244: 133 I. C. 585; 1. R. 1932 Pat. 246: 1932 Cr. C. 641: 33 Cr. L. J. 862, 41 C. 43, fol.

—there is no statutory provision in India justifying a private person in demolishing a building and causing loss to another person by way of abating a nuisance. Consequently forcible demolition of such a structure is an offence under s. 147. 1933 M. W. N. 905.

S. 149.

—in a case under s. 148 when the evidences on both sides are conflicting the marks of injury upon the persons would be the test. 1931 All. 439 : 1931 Cr. C. 711, 1931 All. 712 : 133 I. C. 795 : 1931 Cr. C. 1048 : 1931 A. L. J. 1002.

S. 153.

—the fact that the offence under s. 153 is punishable with maximum of six months' imprisonment indicates that the s

S. 153—contd

was intended to apply to such provocative words or acts as do not directly amount to instigation or abetment. 1933 Bom. 162 : 35 Bom. L. R. 240 : 1933 Cr. C. 474.

S. 153-A.

—promoting enmity between the classes, what constitutes the offence under the sec. 1932 Lah. 99 : 33 P. L. R. 431 : 1932 Cr. C. Sp. B., and what does not. 34 Bom. L. R. 1642.

—criticism of British Imperialism of the Rulers of India cannot be said to be calculated to promote feelings of enmity or hatred between the classes. I. R. 1933 Cal. 252 : 1932 Cal. 139 : 34 Cr. L. J. 305 : 1933 Cr. C. 200 : 142 I. C. 299.

S. 157

—s. 157 refers to some unlawful assembly in the future. Where the accused was charged for having harboured certain persons who were alleged to have formed an unlawful assembly in the past for the commission of an offence, the accused could not be convicted under s. 157. 58 C. 1401 : 35 C. W. N. 720 : 1931 Cal. 712 : 1931 Cr. C. 992 : 131 I. C. 1278

S. 159

—when one person attacks and the other defends, it is legally correct to say that the persons are fighting and the case comes under the definition of "affray," the gist of the offence consisting in the terror it causes to the public. 53 A. 229 : 1931 All. 8 : 1931 A. L. J. 891 : 32 Cr. L. J. 1269 : 134 I. C. 834.

S. 161.

—the plan of tempting and trapping the accused into bribing a public servant is objectionable. A statement made to the Judge that the piff. in a pending case would be willing to offer a bribe to the Judge, does not amount to the abetment of an offence under s. 161. 1933 All. 513 : 34 Cr. L. J. 623 : I. R. 1933 All. 306 : 163 I. C. 661.

S 171.

—where the bulk of the document contained general imputations of misconduct and not statements of fact within s. 171 (g) I. P. C. the accused was liable to be proceeded against under s. 500 and not s. 171 (g) I. P. C. in respect of the defamatory statements. 55 M. 791 : 1932 Cr. C. 515 : 138 I. C. 604 : 33 Cr. L. J. 665 : I. R. 1932 Mad. 598 : 1932 Mad. 511.

S. 182.

—giving false information to the police that a buffalo is missing does not justify a conviction under s. 182 I. P. C. as it is not a report of a cognizable offence nor does it call for any action on the part of the police. 1932 Pat. 170 : 136 I. C. 447 : I. R. 1932 Pat. 111 : 33 Cr. L. J. 317 : 1932 Cr. C. 311.

S. 182—*contd*

—the order for issuing summons to the petitioner under secs 211 and 182 I. P. C. without dismissing his *naraj* petition against the police is invalid 36 C. W. N. 15 1932 Cal. 383 : I. R. 1932 Cal. 395 : 137 I. C. 849 33 Cr. L. J. 514 1932 Cr. C. 312 33 Cr. L. J. 514, similar case 36 C. W. N. 794 33 Cr. L. J. 724 I. R. 1932 Cal. 602 1932 Cal. 550 139 I. C. 217 37 C. W. N. 399

—there is no provision of law that before a M. can enquire into a case under s. 182 on the complaint of police officer he must give the accused party an opportunity to prove the truth of his case 37 C. W. N. 368

—there is no provision in law that before a M. can enquire into a case under s. 182 on the complaint of the Police officer the accused person must have an opportunity to prove his case. Such a procedure is unnecessary and if the M. refuses to do it on the application of the accused it is not an illegality but is a mere error of discretion. The accused person in such a case has ample opportunity to prove his case when he is called upon to enter upon his defence 58 C. 1065 35 C. W. N. 378 : 32 Cr. L. J. 1241 : 1931 Cal. 634 : 134 I. C. 919 : I. R. 1931 Cal. 919, (14 C. 707 F. B. and 14 C. W. N. 765) *Explained*.

—for the purpose of s. 182 I. P. C. is committed at the place given to the public servant by the reaches the public servant. 1932 Cr. 137 I. C. 333 : 1932 M. W. N. 451 : 33 Cr. L. J. 175

S. 186.

—resistance to *naib nazir* holding warrant of attachment is an offence under sec. 186 I. P. C. though the rules framed by the Court regarding attachment were not strictly followed. 13 Pat. L. T. 480 : 1932 Pat. 276.

—Or. 37, R. 5 and form No. 5 of App. F. of C. P. C. require that notice to furnish security and to show cause against it and the order

—resistance to *naib nazir* holding warrant of attachment is an offence under sec. 186 I. P. C. though the rules framed by the Court regarding attachment were not strictly followed. 13 Pat. L. T. 480 : 1932 Pat. 276.

—Or. 37, R. 5 and form No. 5 of App. F. of C. P. C. require that notice to furnish security and to show cause against it and the order

S. 188—contd.

for conditional attachment of the property should be issued simultaneously; resistance to an warrant in complying with the provisions is not an offence under s 186 I. P. C. 1933 All. 759 : 1933 A. L. J. 952.

S. 187.

—where the arrested person refused to move and the assistance of the accused was demanded but refused, he was guilty of an offence under s. 187 I. P. C. 1932 All. 506 : 1932 Cr. C. 594 : I. R. 1932 All. 527 : 139 I. C. 106 : 33 Cr. L. J. 736.

S. 188.

—the Court should not issue process under s. 188 I. P. C. with-
 out questioning the correctness of
 the statement made by the accused
 if the statement was false. 36 C. W. N.
 1932 Cr. C. 550 : 33 Cr. L. J.
 9, 36 C. W. N. 15, 14 C. 707

F. B.) Ref.

—Ordinance No. 5 of 1930 and the Notification thereunder
 making the offence of cognizable and non-bailable
 imposed by s. 195 Cr. P. C. 58 C.
 N. 257 : 1931 Cal. 122 : 1931 Cr. C.
 11, 369.

—breach of lawful order issued by a Police Commissioner
 under s. 62-A (4) Calcutta Police Act and s. 93-A, Suburban Police
 Act is an offence under s 188. 58 C. 1303 : 35 C. W. N. 716 : 132 I.
 C. 174 : 1931 Cal. 410 : 32 Cr. L. J. 844 : I. R. 1931 Cal. 558.

S. 193.

—if the charge is that the evidence has been fabricated in
 connection with proceedings which are only contemplated by the
 accused, the onus is on the Crown to prove that proceedings were
 so contemplated. 56 B. 213 : 1932 Bom. 185 : 137 I. R. 134 : 1932
 Cr. C. 241 : 33 Cr. L. J. 386.

—a statement under s. 164 Cr. P. C. is not evidence in a stage
 of judicial proceeding within Expl. II of 193 I. P. C. 33 Cr. L. J. 413 :
 1932 Lah. 254 : 1932 Cr. C. 278 : 137 I. C. 131.

—in recording statement under s. 164 Cr. P. C. an M. is em-
 powered to administer oath or solemn affirmation to the deponent
 and the statement so recorded may be the subject of a charge of
 perjury. 1933 Lah. 321 : I. R. 1933 Lah. 303 : 142 I. O. 776 : 34 P. L.
 R. 421 : 1933 Cr. C. 564 : 34 Cr. L. J. 469.

—isolated answer in Court proceeding is not sufficient to
 constitute an offence under s. 193. 1933 Cal. 606 : 1933 Cr. C. 970.

—when there is charge and countercharge the Court should
 not act upon affidavit only, inquiry should be made under s. 476,
 Cr. P. C. 58 C. 1211 : 131 I. C. 262 : 53 O. L. J. 184 : 1931 Cal. 314 :
 1931 Cr. C. 408 : 35 C. W. N. 690.

—the English common law rule that the testimony of a
 single witness is not sufficient to convict a person for perjury does

S. 193—*confd.*

not apply to Indian Courts which are bound by the Statute Law. 53 A. 598 1931 All 362 1 R. 1931 All 402: 131 I. C. 594: 32 Cr. L. J. 780.

S. 201.

—the accused may be convicted of the lesser offence under s. 201 even though the main offence charged is not proved. 139 I. C. 725: 1 R. 1932 Mad. 776. 33 Cr. L. J. 814: 1932 Cr. C. 923: 1932 Cr. C. 923.

—before there can be a conviction under s. 201, it must be proved that the accused has been convicted of an offence, and that he has been sentenced to imprisonment for a term exceeding three months. 37 C. W. N. 348.

—the accused must be proved to have committed an offence, and not only the removal of corpse from a particular place. 37 C. W. N. 348.

S. 209.

—in a prosecution for false claim it must be proved affirmatively that the claim of the accused was false. It is not enough for the prosecution to show that the plaintiff (accused) in the civil suit failed to discharge the burden of proof. 1932 Pat. 243: 1932 Cr. C. 640: 1 R. 1932 Pat. 245: 139 I. C. 543: 33 Cr. L. J. 860.

—the accused must be proved to have made to execute a decree of attachment is passed under s. 209. 53 A. 416: All 136: 32 Cr. L. J. 367:

S. 211.

—statements made in the course of an investigation under Chap XIV. Cr. P. C. are not "evidence" for the purpose of s. 211. 36 C. W. N. 1138: 31 J. 858: 1931 M. W. N. 1138: 31 J. 858.

—petition to Superintend

—an order for issuing summons to the petitioner under ss. 182 and 211 I. P. C. without dismissing his narrow petition against the police is invalid. 36 C. W. N. 15: 137 I. C. 819: 1 R. 1932 Cal. 395: 33 Cr. L. J. 514: 1932 Cr. C. 312.

—investigation by a police is not a criminal proceeding against any person. 1931 Nag. 134: 1931 Cr. C. 721: 27 N. L. R. 275: 133 I. C. 398: 32 Cr. L. J. 1009 F. B.

—ordinarily a person should be given an opportunity to show cause before he is ordered to be prosecuted under s. 211. 35 C. W. N. 1210.

S. 215.

—to sustain a conviction under s. 215 it must be shown that the loss of the property was by means of the commission of an offence punishable under the Penal Code. 1932 Pat. 241 : 139 I. C. 76 : I. R. 1932 Pat. 201 : 33 Cr. L. J. 709 : 1932 Cr. C. 638 : 11 Pat. 392.

—where it was clear that money was demanded and paid on account of helping the complainant to recover his stolen property the case came under s. 215 and once the elements of an offence under s. 215 have been established the accused is to prove that he is entitled to the benefit of the exception. 37 C. W. N. 360

S. 217.

—as in the case of a charge under s. 201 I. P. C. it is not necessary for a conviction under ss. 217 and 218 that an offence had already been committed. The knowledge of the accused that he was likely by his act to save a person from legal punishment is sufficient and it can be inferred only from the circumstances of the case. 1932 Cal. 850 : I. R. 1932 Cal. 561 : 139 I. C. 89 : 1932 Cr. C. 881.

S. 224.

—resistance to arrest under invalid warrant constitutes no offence. 1932 Pat. 171 : 138 I. C. 844 : I. R. 1932 Pat. 190 : 33 Cr. L. J. 706 : 1932 Cr. C. 347 : 13 Pat. L. T. 135.

—it is essential for conviction under ss. 224, 225 and 353 I. P. C. that the prosecution should show that the apprehension or arrest was lawful in every way. *Above case.*

—a warrant signed by a Magistrate duly empowered in that behalf during the absence of the Magistrate who took cognizance of the offence and directed the issue of warrant is valid and resistance to it is punishable. 1932 Pat. 175 : 1932 Cr. C. 351 : 13 Pat. L. T. 167.

—a village chonkidar is a police officer under the Chota Nagpur Royal Police Act, 1914 entitled to receive in custody an arrested person under s. 59 Cr. P. C. 1932 Pat. 214 : 13 Pat. L. T. 321 : I. R. 1932 Pat. 171 : 1932 Cr. C. 495.

S. 225-B.

—omission to mention the name or description of the person to whom the warrant is issued for execution makes the warrant invalid and it is immaterial that the person who is arrested is unable to read the warrant and has no knowledge whether the warrant is or is not properly filled. 1932 All. 692 : 1932 Cr. C. 940

—although under Or. 21, R. 37 C. P. C. the Court might have acted injudiciously in issuing a notice and a warrant at the same time yet when the warrant is not defective in form it cannot be resisted. 1932 Pat. 315 : 13 Pat. L. T. 502 : 1932 Cr. C. 853 : 11 Pat 743, 18 C. W. N. 549, *fol.*

S. 235

—in order to fix the responsibility upon any member of the family except the head of it, it is necessary to prove that possession and control were with the subordinate member alone or with him also 1933 Pat. 273 1930 Cr C 738 14 Pat L T. 256

S. 279

—where rashness or negligence in driving a motor car constitutes the offence, the conviction under s. 279 I. P. C. is not only proper but more appropriate. 1932 All 69: 136 I. C. 571 I R. 1932 All 219 33 Cr L J. 309. 1932 Cr. C. 89.

—it is not always necessarily rash and negligent to drive on the wrong side of the road. Much would depend upon other conditions 1933 Oudh 391

S. 292.

“... if the act has a harmful effect, it does it affect the motives and the tendency of the person, it is the question of sentence. 30 C. L. J. 110. 300. 30 C. L. J. 140. 1. 11. 1932 Cal. 623. 139 I. C. 461 33 Cr. L. J. 771: 1932 Cr. C. 608 1932 Cal. 651.

S. 294-A.

—where the ultimate object of the scheme was a lottery and a substantial part of the business was illegal the company should be wound up. The fact that such lotteries were intended to benefit charities does not matter. 63 M. L. J. 554: I. R. 1932 Mad 759: 33 Cr. L. J. 792: 139 I. C. 644: 1932 M. W. N. 904, 1932 Rang 143: 10 Rang. 232: I. R. 1932 Rang. 166: 138 I. C. 687: 33 Cr. L. J. 696

—the Irish sweep-stake is not authorised by the Govt of India. An accused concerned in making collection for the lottery in connection with the Irish sweep stake commits an offence under s. 294-A I. P. C. 56 C L. J. 539: 1933 Cal. 332: 143 I. C. 113: I. R. 1933 Cal 336

S. 297.

—the word “trespass” as used in this sec. has not the same meaning as the expression “criminal trespass” used in s. 441. It is in such plan and with in s. 297. Demolition of is an offence even if the d through Civil Court. Cal. 392: 1932 Cal. 459:

S. 300.

—neither principle nor approved practice can be invoked in favour of the view that a capital sentence should not be

S. 300—*contd.*

when the offenders are constructively guilty of murder. 13 Pat. L. T. 702 : 11 Pat. 807.

— the provocation that will bring a case within Excep. 1 to sec. 300 must not be provocation given by anything done in obedience to the law or by a public servant in the exercise of his powers. 1933 Pat. 508 : 1933 Cr. C. 1079 : 14 Pat. L. T. 464.

— a mere vulgar abuse is not such a grave and sudden provocation as is contemplated in Exception 1. 1932 Lah. 369 : I. R. 1932 Lah. 251 : 136 I. C. 715 : 33 Cr. L. J. 338.

— in order to take advantage of Exception (4) it must be shown that the offender did not take undue advantage or act in a cruel or unusual manner. 1932 Lah. 606 : 33 P. L. R. 718 : 1932 Cr. C. 820.

— where two young men, equally matched, were fighting and one of them dealt two blows on the other in quick succession causing his death, Exception IV applied. I. R. 1932 Lah. 625.

S. 302.

— there can be no inference as to the guilt of the accused who was found last with the deceased. 1932 Lah. 243 : 33 Cr. L. J. 411 : I. R. 1932 Lah. 291 : 1932 Cr. C. 255 : 137 I. C. 59.

— of the two accused might have did not disclose an offence of C. 923 : I. R. 1932 Mad. 776 : 33

— where the accused struck a more or less random blow in the heat of a fight which proved fatal, the accused ought to be committed under s. 304 (2) and not under s. 302 I. P. C. 1931 M. W. N. 1320.

— when the accused out of despair on account of starvation, killed her infant daughter by cutting her throat, the case did not call for the infliction of capital sentence and that the ends of justice would be sufficiently met by sentencing the accused to transportation for life. 137 I. C. 511 : 1932 Cal. 658 : I. R. 1932 Cal. 339 : 1932 Cr. C. 650

— when the salient facts of the case as proved and the confession of the prisoner cannot be reconciled a conviction for murder cannot be upheld. 1931 All. 609 : 1931 A. L. J. 1000 : 1931 Cr. C. 961 : I. R. 1931 All. 705 : 32 Cr. L. J. 1052.

— where four persons attacked their victim in concert with a view to murder him and fatal stab was inflicted by one of them, all are guilty of murder. 139 I. C. 81 : I. R. 1932 Cal. 570 : 1932 Cr. C. 861 : 1932 Cal. 815 : 33 Cr. L. J. 663 F. B.

— where the Judge finds that the murder was premeditated, cold-blooded and brutal in the extreme and there is no extenuating circumstance, the extreme punishment should be inflicted. 1932 Lah. 245 : 33 P. L. R. 158 : 1932 Cr. C. 257 : I. R. 1932 Lah. 463 : 138 I. C. 327, 1933 Pat. 180 : 142 I. C. 613 : I. R. 1933 Pat. 165 : 34 Cr. L. J. 395 : 1933 Cr. C. 511, 1933 Lah. 131 : 142 I. C. 577 : 34 Cr. L. J. 443 : 1933 Cr. C. 247 : I. R. 1933 Lah. 213.

S. 386—contd.

abandon a condition of purity from unlawful sexual intercourse. It is not necessary to prove that the girl has never at any time surrendered her condition of purity from unlawful sexual intercourse, 1933 Cal. 718.

S. 366-A.

—the offence under this sec. is complete when the accused have induced the minor to leave her place and what happens subsequently does not constitute a fresh offence. 1932 Lah. 555 : 138 I. C. 597 : I. R. 1932 Lah. 512 : 33 Cr. L. J. 673 : 33 P. L. R. 727.

—the absence of evidence that the accused knew that the girl was married does not affect. *Above case.*

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or	course hut without force
498	37 C. W. N. 317 : 1933 Cr. C.
341.	t. 1933 Cal. 261 : 34 Cr. L. J.

S. 373.

—on a charge under s. 373 it is incumbent on the prosecution to prove beyond a shadow of doubt that the girl is under the age of 18 years. 35 Cr. W. N. 316.

S. 378.

—intercourse with a minor girl even with her consent constitutes offence under this sec. 1932 All. 580 : 1932 A. L. J. 776 : 1932 Cr. C. 698.

S. 379.

—when an auction-purchaser at a rent execution-sale takes delivery of possession the bamboo-clumps standing on the land passes to him and if the accused cuts and removes certain bamboo clump he will be guilty under s. 379. 1932 Pat. 344 : 13 Pat. L. T. 519.

—a landlord cannot prosecute in respect of a theft of trees in the possession of his tenant. 1931 Mad. 241 : I. R. 1931 Mad. 541 : 193 M. W. N. 914 : 131 I. C. 493 : 1931 Cr. C. 361.

S. 390.

—in order to convict the accused of the offence of robbery it is necessary that hurt or wrongful restraint should have been caused for the purpose of the theft. 60 M. L. J. 690 : I. R. 1931 Mad. 695 : 133 I. C. 7 : 1930 M. W. N. 1142 : 1931 Mad. 481.

S. 395.

—where five persons were charged under s. 395 for dacoity but as there was no evidence of conspiracy, the Judge split up the charges under ss. 302 and 392 and convicted the accused, held that the accused should not have been convicted of murder without a specific charge. 36 C. W. N. 880.

S. 395—*contd*

—a dacoity in which no resistance is offered by the inmates and so no violence is required does not on that account cease to be a dacoity and should not be treated as a theft. 1933 All. 114. 1933 Cr. C. 209 I. R. 1933 All 142 : 34 Cr. L. J. 448.

S. 396.

—where the dacoits being pursued abandoned the booty and finding the flight very difficult turned round and one of them stabbed one of the pursuers, held that the fact that the booty had been abandoned and that the pursuers were armed for the purpose of recovering the booty was a mitigating circumstance 13 Cr. L. J. 722

S. 397.

—s. 34 I. P. C. has no application to the provisions of s. 397 1931 Pat. 49 : 1931 Cr. C. 145 : 32 Cr. L. J. 476 : 130 I. C. 267 : I. R. 1931 Pat. 171, 1924 Cal. 643, 28 A. 404 *fol.* 21 A 263 *Diss. from*

S. 401.

—a person who receives stolen property from a gang of the character described in s. 401 is not necessarily a member of the gang. 1932 Lah 456 : 1932 Cr. C. 624 : I. R. 1932 Lah. 458 : 138 I. C. 424.

S. 405.

—partners being joint owners of partnership property each partner is co-owner of the whole of the common stock. So it is essential to consider how a partner can be entrusted with or with how he can dishonestly mis-use. 1933 Cal. 552 : 37 C. W. J. 958 : 145 I. C. 416, but see 33 13 B. L. R. 307 F. B. and 6 Bom.

L. R. 553.

S. 406

—this sec. does not embrace the case of a man who has taken an article on hire and fails to produce it. There must be some evidence of dishonest action. 1932 All 324 : I. R. 1932 All. 620 : 140 I. C. 78 : 33 Cr. L. J. 866.

—it is wrong to say that the accused became guilty of criminal breach of trust simply because he became an executor *de son tort*. 58 C. 1051 : 35 C. W. N. 425 : 1931 Cr. C. 248 : I. R. 1931 Cal. 529 : 132 I. C. 145 : 32 Cr. L. J. 836 F. B.

S. 408.

—when the relationship of partners exists between the complainant and the accused a conviction for breach of trust is not sustainable. 931 Pat. 159 : 1931 Cr. C. 399 : 130 I. C. 833 : 32 Cr. L. J. 620 : 12 Pat. L. T. 355.

S. 414.

—the word 'believe' is much stronger than the word suspect
1932 Lah. 434 : I. R. 1932 Lah. 586 : 139 I. C. 442 : 33 Cr. L. 764.

S. 420

—it is not necessary that there should be any words used to constitute false representation. Deception by conduct of the accused is sufficient. 56 Cr. L. J. 73.

—the mere fact that the accused was in embarrassed circumstances at the date of entering into a contract is not sufficient to prove an intention to cheat. A man in embarrassed condition is not bound to disclose all his circumstances to people with whom he deals on credit, but he is not entitled to make any untrue statement.
56 B. 204 : 137 I. C. 142 : 33 Cr. L. J. 401 : 1932 Cr. C. 385

S. 427.

—where there was boundary dispute and the accused cut the eaves of the complainant under a *bonafide* claim of right he was not liable to be convicted under s. 427 I. P. C. 1932 Mad. 676 : I. R. 1932 Mad. 596 : 33 Cr. L. J. 655 : 138 I. C. 608 : 1932 Cr. C. 834.

S. 430.

—the act which caused the injury may have been one of wantonness. If the cutting is without regard to the complainant, the offence is complete.
Pat. 224 : I. R. 1932 Pat. 128 : 1932 Cr. C. 407 : 136 I. C. 592 : 33 Cr. L. J. 313.

S. 457.

—burglary is a serious crime. Burglars should not be released on probation of good conduct. 1932 Lah. 258 : 137 I. C. 716 : I. R. 1932 Lah. 346 : 33 Cr. L. J. 500 : 1932 Cr. C. 323.

S. 463.

—the maker of the part of a forged document is also guilty, and it is immaterial whether he was present or not at the time of completion of the document. 26 Sind L. R. 105.

—making of false entries in police diaries by the police officer to show that the charge against him that he kept the suspected persons under surveillance was false is not punishable under s. 465. 1932 Bom. 545 : 56 B. 488 : 1932 Cr. C. 777 : 34 Bom. L. R. 1090

—to constitute an offence under s. 467 or 471 I. P. C. the nature of the user is not material. 59 C. 1233 : 36 C. W. N. 505 : 33 Cr. L. J. 695 : 55 C. L. J. 349 : 1932 Cr. C. 337 : 138 I. C. 705.

—a conviction for forgery cannot be sustained merely on the evidence of handwriting expert. 1932 Cr. C. 628 : 1932 Lah. 490 : 138 I. C. 368 : 33 Cr. L. J. 593.

S. 467

—this sec provides punishment for forgery not only of a document purporting to be valuable security but also of any document purporting to give authority to any person; to receive or deliver any money. 1933 Pat. 488 : 144 I. C. 936 1933 Cr. C. 1030 : 34 Cr. L. J. 892 14 Pat. L. T. 580

S. 471

—the production of a certified copy of a forged document is a use of the document so as to constitute an offence under s. 471 1932 Sind 90 33 Cr. L. J. 452 : 1932 Cr. C. 530 : 137 I. C. 341.

—to constitute an offence under s. 467 or 471 I. P. C. the nature of the user is not material. 59 C. 1233 : 36 C. W. N. 505 : 55 C. L. J. 349 : 33 Cr. L. J. 685 : 1932 Cal. 390 : 138 I. C. 705.

—for the purposes of this sec. the filing of a document as the basis of a plaint is "false" whether that document is acted upon whether the party files it or not. 1932 Cal. 545 :

—the essence of forgery is fraud and the prosecution must prove fraud 1932 M. W. N. 117.

S. 477-A.

—the subsistence of partnership between the parties is no answer to a charge of falsification of accounts by one partner who is in charge of the books. 36 C. W. N. 303 : 1932 Cr. C. 454 : 1932 Cal. 464 : 138 I. C. 338 : 1 R. 1932 Cal. 447.

—the provisions of sec. 477-A, I. P. C. are not covered by the provisions of sec. 195 (1) (c), Cr. P. C. 1932 Sind 53 : 1932 Cr. C. 194

—a maker of false document to conceal fraud already committed is guilty under s. 477-A. 1933 All. 525, (11 M. 411, 22 C. 313, 35 C. 450, 37 Bom. 666) *fol* (1922 All. 214, 5 All. 221, 8 A 653) *Diss. from*

S. 480.

—meaning of using false trade-mark. 1932 Sind 94 : 139 I. C. 335 : 1 R. 1932 Sind 119 : 33 Cr. L. J. 778.

S. 494.

—when a Hindu male marries a christian woman in England and marries a second time in Hindu form in India, he commits no bigamy. 1932 Lah. 116 : 136 I. C. 262 : 1 R. 1932 Lah. 214 : 1932 Cr. C. 96.

—when a party contracts a second marriage without annulling the first one he is liable to be convicted under s. 494 I. P. C. and the offence cannot be obliterated by a subsequent divorce or settlement. 1932 Mad. 561 : 1932 Cr. C. 660 : 138 I. C. 518 : 1 R. 1932 Mad. 591 : 30 Cr. L. J. 647.

S. 498.

S. 499

—a member of the bar in this country has no absolute privilege, but in practice the Courts have held that an advocate is entitled to special protection. 1932 Bom. 490 : I. R. 1932 Bom. 487 : 139 I. C. 275 33 Cr. L. J. 740 : 1932 Cr. C. 614 : 34 Bom. L. R. 910.

—the presumption in the case of pleaders asking question in cross-examination is that such questions are put in good faith for the protection of his client's interests within the exception to s. 499, 1933 Cal. 185 : 1933 Cr. C. 231.

S. 500.

—general allegation of misconduct against rival candidate in election manifesto if defamatory. 55 Mad. 791 : 33 Cr. L. J. 665 : I. R. 1932 Mad. 598 : 138 I. C. 604 : 1932 Cr. C. 515 : 1932 Mad. 511.

—a newspaper editor is not in a better position in regard to the law of defamation than a private individual. 1933 All. 434 : 1933 Cr. C. 740.

S. 504.

—in order to substantiate a charge of insult the words must amount to something more than "mere vulgar abuse." 56 B. 196 : 34 Bom. L. R. 282 : 1932 Bom. 193 : 137 I. C. 186 : 33 Cr. L. J. 463.

S. 506.

—a person by becoming a member of a society submits himself to the authority of the general body. A proposal by the Managing Committee to refer to the judgment of the general body an act done by one of its members cannot be regarded as a threat to cause any illegal harm. 1933 Sind 196 : 1933 Cr. C. 711. (30 C. 418, 1923 Cal. 590) *Dist.*

MISCELLANEOUS CASES—GENERAL PRINCIPLES

Absence of accused, propriety of trial.

—it is an essential principle of English criminal law that the indictable offences must be tried in the presence of the accused and for this purpose "trial" means the whole of the proceedings including sentence. In cases of misdemeanour there may be special circumstances which permit a trial in the absence of the accused ; but in trials for felony the rule is inviolable unless possibly the violent conduct of the accused himself intended to make trial impossible renders it lawful to continue in his absence. 1933 P. C. 218 : 34 Cr. L. J. 886 : 145 I. C. 209 : 1933 A. L. J. 1025 P. C.

Appeal

—allegation of one of the jurors being hard of hearing and another ignorant of English and unable to follow the arguments must be supported by affidavit filed in time. 1932 Pat. 302 : 1932 Cr. C. 774 : 13 Pat. L. T. 440.

Benefit of doubt.

—when a set of circumstantial evidence is capable of two constructions, one in favour of the accused and one against him the

Miscellaneous Cases—General Principles—contd.

—mistakes in recounting of facts is disastrous in criminal cases. 1932 Lah. 243 : I. R. 1932 Lah. 291 : 33 Cr. L. J. 411 : 1932 Cr. C. 255 : 137 I. C. 59.

—it is not the duty of a judge to find any and every reason possible and any and every argument to whittle away the significance and the defects of the prosecution. 1931 All. 609 : 133 I. C. 593 : I. R. 1931 All. 705 : 32 Cr. L. J. 1052 : 1931 A. L. J. 1000.

—the Court is to determine an issue upon the material before it and a litigant cannot be allowed to arrogate to himself the right to decide it. 1931 Lah. 473 : 32 Cr. L. J. 909 : 1931 Cr. C. 697 : 32 P. L. R. 498 : 12 Lah. 623 : I. R. 1931 Lah. 611.

—if the prosecution story is found to be false the Court can by all means do the best in view of the available evidence to arrive at some theory as to what has actually happened. But where the story is found to be untrue in its fundamental aspects the Court will not construct any theory and will acquit the accused. 1931 Pat. 516 : I. R. 1931 Pat. 216 : 131 I. C. 536 : 32 Cr. L. J. 736.

—where a prisoner complains to a Court that he is not treated in accordance with the jail rules the Court has jurisdiction to inquire into such a complaint and pass necessary orders. 1931 Lah. 562 : I. R. 1931 Lah. 731 : 133 I. C. 59 : 32 Cr. L. J. 988.

Duty of prosecution.

—the prosecution must succeed on the strength of its own defence. 54 M. 931 : 1931 Mad. 929 : 134 I. C. 1143.

—that every eye-witness ought to be examined. 5 B. 434 : 1932 Bom. 279 : 1932 Cr. C. 503 : 33 Cr. L. J. 613.

—unless all the material witnesses are called the defence is deprived of opportunities of eliciting from the absent witnesses facts that may discredit the prosecution case, and if the failure to examine any of them is known to have prejudiced the accused, the Court may direct a retrial. 59 C. 1361 : 55 C. L. J. 439 : 139 I. C. 873 : 1932 Cal. 474 : 1930 Cr. C. 464 : 33 Cr. L. J. 854.

—it is the duty of the prosecution to place before the Court, specially in a case of murder, all the available evidence which is likely to throw any light upon the crime. 137 I. C. 691 : 1932 Lah. 500 : 1932 Cr. C. 664 : 32 Cr. L. J. 497 : I. R. 1932 Lah. 347.

—witnesses named in the first information report need not be examined by the prosecution. Nor does it give rise to any presumption under s. 114 (g) of the Evl. Act. The only witnesses whom the prosecution need call are those who know the facts and are willing to give truthful evidence relevant to the charge. 58 C. 1335 : 33 Cr. L. J. 135 : 135 I. C. 443 : 1932 Cal. 118 : 1932 Cr. C. 103, 1933 Cr. C. 964 : 1933 Cal. 600.

—when in a criminal case a clear and definite order of the M. is relied on as having been disobeyed the prosecution must prove what the order was and its transgression. 1933 Bom. 148 : 33 Bom. L. R. 185 : 1933 Cr. C. 460.

Miscellaneous Cases—General Principles—contd.

—the prosecution should exercise careful discrimination and avoid the filling up of evidence and the over-burdening of the record and waste of time 1933 All 690. 1933 Cr C 1202 1933 A. L. J. 799 145 L. C. 481.

Evidence, admissibility of.

—apart from special cases, the unsworn statement of a witness, so far as the maker in his evidence does not confirm and repeat it, cannot be used against the accused at all. 35 C. W. N. 731: 53 C. L. J. 427: 131 L. C. 575: I. R. 1931 Cal. 463: 32 Cr. L. J. 768 1931 Cr. C. 497: 1931 Cal. 401 F B.

—evidence of near relations should not be discarded simply on the ground that on account of that relationship or friendship they cannot be considered as reliable witness. 1931 Lab 38: 130 I. C. 410: I. R. 1931 Lah. 282: 1931 Cr. C. 102.

—it cannot be said as a rule of law that it is unsafe to base a conviction on the uncorroborated testimony of a fingerprint expert. Expert's evidence should be cautiously relied on. 35 C. W. N. 863: 54 C. L. J. 107: 133 I. C. 111: I. R. 1931 Cal. 639: 32 Cr. L. J. 1001: 1931 Cr. C. 593.

—the mere fact that an eye-witness does not come forward immediately an investigation is begun is not by itself necessarily a sufficient ground for rejecting his testimony. 1931 Lah. 529: I. R. 1931 Lah. 782: 133 I. C. 446: 1931 Cr. C. 769: 32 P. L. R. 461.

—although the prosecution has to be judged on its own merits an accused person cannot defeat the ends of justice by merely refusing to answer questions 1931 Lah. 178: 131 I. C. 277: I. R. 1931 Lah. 405: 32 Cr. L. J. 634.

—when a witness called by the prosecution is subsequently not on that account for its worth. 36 C. : 1932 Cr. C. 498: 1932

—mere suggestions by a pleader or advocate for the accused are either partly or wholly prosecution. 36 C. W. N. 106: Cr. L. J. 725: 139 I. C. 245:

—evidence relating to tracks measured three days after the occurrence and examined twelve days after is of no use. 1932 Lah. 557: I. R. 1932 Lab. 695: 140 I. C. 194: 35 Cr. L. J. 935: 1932 Cr. C. 721.

admissibility of evidence should al. I. R. 1933 Cal. 312: 1933 : 142 I. C. 653.

would affect the weight to perty but would not make 1933 Cal. 187: 34 Cr

Miscellaneous Cases—General Principles—contd.*Identification*

—the mere fact that some witness fail to identify a culprit does not necessarily render the identification by other witness valueless. 1931 Lah. 178 : 131 I. C. 277. I. R. 1931 Lah. 405 : 32 Cr. L. J. 684 : 193 Cr. C. 298

Ignorance of law.

—ignorance of law is no excuse but it may be a mitigating circumstance in awarding the sentence 1933 Cal. 332 : 143 I. C. 113. 56 C. L. J. 539 : I. R. 1933 Cal. 336 : 1933 Cr. C. 411.

Inquest report.

—where in a case of murder the confessional statements of the accused are relied on the defence can rely on the inquest report which states that the police officer could not at that time ascertain who committed the murder. The defence can also cross-examine persons who depose as to the confessions and can rely on the inquest report and is entitled to a copy of the inquest report, 37 C. W. N. 732.

Interview.

—the fact that the accused had an interview with his relations is no ground for rejecting a later application by him to interview his counsel. 1931 Lah. 99 : 1931 Cr. C. 163 : 12 Lah. 435 : 32 Punj L. R. 1

Jury trial.

—when the judge in his charge to the jury did not give any direction as to the onus of proof or benefit of doubt and it could not be said in the case that, if properly directed, the jury must have returned the same verdict, there was misdirection vitiating the trial. 1933 P. C. 218. 1933 Cr. C. 1302 : 1933 A. L. J. 1025 : 145 I. C. 209. 34 Cr. L. J. 886.

—where some of the accused were convicted and some acquitted and the foreman was subsequently convicted of having taken a bribe in connection with the same trial, held that the conviction by jury trial was not sustainable. 60 C. 751 : 1933 Cal. 639 : 1933 Cr. C. 1038.

Medical examination.

—if the consent of the accused was in fact obtained for the medical examination, it is not necessary that it should be put down in writing. 36 C. W. N. 1152 : 1933 Cal. 727 : 1932 Cr. C. 728

Motive, evidence of.

—when the evidence of motive is equally consistent with the innocence and guilt of the accused the Court has to see next what external corroborative evidence there is. 1933 Pat. 517 : 1933 Cr. C. 1166 : 14 Pat. L. T. 494.

Procedure.

—where the records in criminal trial were untidy and slovenly and the proceedings were allowed to drag on indefinitely, the parties

Miscellaneous Cases—General Principles—contd.

appearing or not as it suited their convenience, the conduct of the case by the M. was reprehensible. 35 C. W. N. 865 : 58 C. 1293

Proof of guilt.

—a person cannot be convicted merely because the defence story is false though on the question of guilty knowledge the conduct of the accused at the time may be absolutely of the first importance 37 C. W. N. 426

—in every case the onus lies on the prosecution to prove the guilt of the accused, and the accused is not to prove innocence 37 C. W. N. 368.

Sentence.

—whether fine is severe or not depends on the position and status of the person fined. 1931 Cal. 633 : 1931 Cr. C. 833 : 134 I. C. 1129.

—a breach of the peace even if it involves an assault on a public officer of a mild character, unless there be some elements of criminality in it, should not ordinarily be punished by sentences of imprisonment. 1933 Pat. 342 : 12 Pat. L. T. 791 : 1931 Cr. C. 790 : 32 Cr. L. J. 1166 : I. R. 1931 Pat. 464.

lawful assembly a disturbance to persons who joined in it and those who did not join 1931 Cal. 606 : 1931 Cr. C. 758 : 134 I. C. 1041.

—a Court in passing sentence should inflict such a sentence as the gravity or otherwise of the crime with which the accused has been convicted warrants and merits irrespective whether the sentence inflicted will involve a right of appeal or not. 58 C. 392 : 1931 Cal. 448 : 1931 Cr. C. 600 : 134 I. C. 536 : 32 Cr. L. J. 1181.

months and imprisonment for shoplifting Cr. C. 78 :

—the theory of punishment is based upon the (a) protection of the public ; (b) the prosecution of crime ; and (c) the reformation of the offender. In the case of political offences, arising out of the beliefs of the accused, severe sentences defeat their object. In practice such sentences confirm the offenders in their beliefs and create other like offences. 1933 All. 690 : 145 I. C. 481 : 1933 A. L. J. 799 : 1933 Cr. C. 1202.

—the strength of the evidence against the accused should be

Miscellaneous Cases—General Principles—contd.*Transfer.*

—a Sessions Judge cannot transfer an appeal from the file of an Additional Sessions Judge to his own file 1931 All 435 : 1931 A. L. J. 591 : 1931 Cr. C. 707.

Trial by the magistrates.

—it is undesirable that a case should be heard partly by one M. and partly by another. 37 C. W. N. 982 : 1933 Cal. 582 : 1933 Cr. C. 953 : 34 Cr. L. J. 958.

THE END.

